

VOLUME II
TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964

No. 292

**THE ATLANTIC REFINING COMPANY,
PETITIONER,**

vs.

FEDERAL TRADE COMMISSION.

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

**PETITION FOR CERTIORARI FILED JULY 17, 1964
CERTIORARI GRANTED DECEMBER 14, 1964**

No. 292

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In the
United States Court of Appeals
For the Seventh Circuit

No. 13340

THE ATLANTIC REFINING COMPANY,
Petitioner,

vs.

FEDERAL TRADE COMMISSION,
Respondent.

Petition to Review and Set
Aside Order of the Fed-
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FREDERICK LINGENFELSER was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaheer.

Q. Will you please state your name and home address?

A. My name is Frederick Lingenfelter. I live at 1918 Hamilton Street, Allentown, Pennsylvania.

Q. What is your present—by whom are you presently employed?

A. I am presently employed by the Reading Battery Division of the Electric Auto-Lite Company.

Q. And prior to the time Reading Batteries became a division of Electric Auto-Lite Company with whom were you employed?

A. Reading Batteries, Inc., in Reading, Pennsylvania.

Q. And do you recall the approximate time when Reading Batteries, Inc., was acquired by Electric Auto-Lite Company?

A. In May of 1956.

Q. And how long were you employed as a salesman by Reading Batteries, Inc.?

1088 A. I came to Reading Batteries in March 1941.

Q. What brand batteries does Reading Batteries sell?

A. Rebat. We also make some brand batteries: Pow-erlite, Action and Federal.

Q. And are you referring to the present division or the prior company?

A. Prior company.

Q. Prior company?

A. And present division, too.

Q. Did you at one time call on an Aero Oil Company in New Oxford, Pennsylvania?

A. I did.

Q. And about what time did you begin to call on Aero Oil Company?

A. In March of 1941.

Q. Will you please state what the Aero Oil Company is—what business it is in.

A. They are large distributors of petroleum products.

1092 Mr. Kelaher: It has been stipulated between counsel Supporting the Complaint and counsel for Atlantic, that Aero Oil Company of New Oxford, Pennsylvania, distributed Fleet Wing petroleum products from October 26, 1929 to June 1, 1946. On the latter date it changed its source of supply to the Atlantic Refining Company and has continued from that date to be supplied by the Atlantic Refining Company with respect to petroleum products.

It is further stipulated, subjected to verification, that in 1946 the Aero Oil Company operated 7 bulk plants, 2 transports, and 10 tank trucks; and further that it supplied 150 dealers and around 1,600 commercial, rural and domestic fuel oil accounts.

Mr. Mason: It will be noted that counsel for Goodyear does not join in that stipulation.

1093 Mr. Thompson: It is my understanding, of course, that this stipulation refers only to petroleum products. That is to say, gasolines—

Hearing Examiner Kolb: That is all that is covered in that brochure.

Mr. Thompson: Yes, sir; and oil.

Mr. Kelaher: Your Honor, the brochure also mentions TBA products.

Mr. Thompson: Well, I'm not stipulating anything about TBA products. I think that is perfectly clear.

Mr. Kelaher: That is perfectly all right, we will develop that.

Hearing Examiner Kolb: Let the record show that Exhibit 316 is withdrawn.

(The document referred to, heretofore marked Commission's Exhibit 316 for identification, was withdrawn.)

By Mr. Kelaher:

Q. Now, Mr. Lingenfelter, would you please restate when you started calling on Aero Oil Company?

A. In March of 1941.

Q. And at that time did you sell Rebat batteries to Aero Oil Company?

A. We didn't have Rebat at that time; we had what we called Reading batteries.

1094 Q. And did you sell Reading batteries to Aero Oil Company?

A. Yes.

Q. And prior to the time you called on the account had your company been selling Reading batteries to Aero Oil Company?

A. Yes, sir.

Q. For approximately how long a period had they been making such sales?

A. Well, I think they had sold them since 1936.

Q. And do you know whether Aero Oil Company purchased Reading batteries exclusively?

A. They did at that particular time; yes.

Q. And from 1936 up until—and when you started calling on the account were they buying Reading batteries exclusively?

A. That's right.

Mr. Mason: I take it, your Honor, that this testimony is going in subject to connection, so far there's obviously no connection to Goodyear and this oil company and I

don't want to object continuously because of the lack of connection, but I'd like it to be understood that if it's not connected up it's taken subject to a motion to strike.

Hearing Examiner Kolb: These questions all appear to be preliminary questions at the present time.

By Mr. Kelaher:

Q. And are the general offices of Aero Oil Company located in New Oxford, Pennsylvania?

1095 A. Yes.

Q. And when you began calling did you call at the general offices in New Oxford, Pennsylvania?

A. Yes.

Q. And were purchases made by Aero Oil Company at that office for their entire organization?

A. Yes.

Q. So that you were selling Reading batteries for the entire Aero Oil Company organization, is that correct?

A. That's right.

Q. Now, was Aero Oil Company considered a good account?

A. Yes.

Q. Was it a large buyer of Reading batteries?

A. It was a good volume account.

Q. When did your company change the brand name from Reading batteries to Rebat?

A. I don't know the exact date.

Q. But at some later date, as I understand it, you mentioned earlier in your testimony that they did sell Rebat batteries?

A. That's right.

Q. Was that just a change in brand name?

A. That's right.

Q. Did you sell Reading batteries to Aero Oil Company during 1942?

1096 A. Yes.

Q. Exclusively?

A. In '42?

Q. Yes.

A. Yes, sir.

Q. For how long a period did you sell Reading batteries to Aero Oil Company exclusively?

A. Until Atlantic Refining went in, I think in 1946.

Q. What happened after Atlantic Refining went in?

A. It took on Exide.

Q. Did they continue to purchase Reading batteries?

A. Yes.

Q. Did they continue to purchase in the same volume you had been selling prior thereto?

A. I would say approximately about the same; yes.

Q. And do you have a record of your sales of Reading batteries to Aero Oil Company starting about in 1946?

A. Yes, I do.

Mr. Mason: I take it, your Honor, this has gone beyond the preliminary stage and it still has no connection with anything that is a part of this law suit and certainly has no connection so far as Goodyear is concerned and I object to this line of testimony.

Hearing Examiner Kolb: The objection will be overruled.

1097 By Mr. Kelaher:

Q. Will you please state how many batteries you sold to Aero Oil Company in 1946?

A. 1,346 units.

Q. And do you have the number of batteries you sold to Aero Oil Company in 1947?

A. 1,854.

Q. And now taking 1948, how many did you sell?

A. 650.

Q. 1949?

A. 491.

Q. 1950?

A. 395.

Q. 1951?

A. 281.

Q. 1952?

A. 75.

Q. Now, 1953?

A. Nothing.

Q. Have you sold any batteries to Aero Oil Company since 1953?

A. No.

Q. Do you recall when the 75 batteries were sold to Aero Oil Company in 1952? Approximately.

A. I'd say in the first period of the year, I mean 1098 the 75 were purchased in the period of from January to March.

Q. And at that time were you selling Rebats?

A. At that time we were selling Rebats, yes.

Q. Now, did you thereafter solicit Rebat business with Aero Oil Company?

A. I called on them.

Q. Did you call on them shortly after March of 1952?

A. Yes.

Q. And did you discuss the situation with anyone at Aero Oil Company?

A. Yes.

Q. With whom did you speak?

A. With William Snyder and Mr. Bert Simpson.

Q. What was Mr. William Snyder's position with Aero Oil Company?

A. He wrote up the orders.

Q. He was—was he the one who purchased the batteries?

A. That's right.

Q. And what was Mr. Simpson's position with Aero Oil Company?

A. He was TBA manager.

Q. Will you please state your conversation with these gentlemen at that time?

Mr. Mason: I object to any conversation with a total stranger to this law suit and a person whose connection with anything that is involved here, it's not even been 1099 brought out—this is the worst-kind of hearsay testimony.

Mr. Kelaher: I think if the counsel will just be patient.

Hearing Examiner Kolb: Objection overruled.

By Mr. Kelaher:

Q. You may answer, Mr. Lingenfelter.

A. Would you repeat that?

Q. Would you please state the conversation you had with Mr. Snyder and Mr. Simpson when you called there shortly after March of 1952?

A. Yes. They told me then that Atlantic Refining Company had given them some additional outlets in their territory and they were practically compelled to go along with the Atlantic proposition—program.

Q. And what about batteries, was Atlantic supplying that?

A. Firestone.

Q. And thereafter you never sold any batteries to Aero Oil Company, is that correct?

A. No.

Mr. Kelaher: No further questions, your Honor.

Mr. Mason: I move to strike the entire testimony as having absolutely no connection with this law suit and certainly no connection with Goodyear. I wish, counsel

has kept promising me I was going to understand at some point along here how this connected up, but I certainly don't see it all now.

Hearing Examiner Kolb: I see no connection with Goodyear with this.

Mr. Kelaher: Your Honor, I will state that the New Oxford, Pennsylvania is in the Eastern Pennsylvania marketing region which comes under the Firestone TBA sales commission plan.

Mr. Mason: On the other hand, this hasn't even been connected up with the sales commission plan.

Hearing Examiner Kolb: His testimony will be received subject to a motion to strike.

Mr. Ballard: Your Honor, may we have a short recess to discuss possible cross-examination?

Hearing Examiner Kolb: Yes.

(Short recess.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Ballard: We are ready to proceed, your Honor.

Hearing Examiner Kolb: All right. Cross-examine.

Cross-Examination by Mr. Ballard.

Q. Mr. Lingenfelter, I represent the Atlantic Refining Company, as you have probably gathered, and this Gentleman represents the Goodyear Company.

Now, I imagine that during the years 1946, '47, 1948 even back into '41, there were other battery manufacturers calling on Aero Oil, were they not, trying to get that business?

A. I imagine.

Q. It was a good customer, Aero Oil was a good customer?

A. That's right.

Q. Desirable customer?

A. That's right.

Q. During the years '46, '47, '48, '49 and '50 Aero was handling Exide batteries in addition to Reading batteries, is that right?

A. That's right.

Q. And Atlantic Refining was selling those Exide batteries to Aero; is that right?

A. I don't know that.

Q. You don't know who was selling them?

A. They were buying an Exide battery.

Q. But you don't know who they were buying from?

A. No.

Q. Now, do you happen to know that in 1951 Aero Oil got a new contract with Exide?

A. I don't know.

Q. You don't know that?

A. No.

Q. They became a wholesale distributor—did you ever hear that they became a ~~wholesale~~ distributor of Exide in 1951?

1102 A. I was always under the impression that they were.

Q. They kept on buying Exide—they bought Exide in 1951, didn't they?

A. That's right, to the best of my knowledge they did.

Q. And in 1952?

A. Yes.

Q. And in 1953?

A. I don't know.

Q. You don't know whether they bought Exide or not?

A. I believe they did; I still think they handle Exide, I don't know for sure.

Hearing Examiner Kolb: I think you have the wrong battery, haven't you?

Mr. Ballard: No, sir. Exide battery is the battery I'm talking about. Is that the battery you are talking about?

The Witness: Yes, sir.

Hearing Examiner Kolb: That's not the battery he sells, though?

Mr. Ballard: No, sir; he sells Reading batteries.

Hearing Examiner Kolb: All right.

By Mr. Ballard:

Q. Exide batteries, of course, is a nationally advertised battery, isn't it?

A. That's right.

1103 Q. Reading batteries are not nationally advertised?

A. That's right.

Q. When did you stop calling on Aero Oil, sir?

A. Well, I would say—you mean to solicit business?

Q. Yes.

A. Oh, I made—I actually stopped calling on them in '52, but I did stop in to see them every once in a while.

Q. But your knowledge of their purchasing really ends about 1952, is that right? Their purchases.

A. That's right.

Q. I think you did say that Reading batteries has been purchased by Electric Auto-Lite?

A. That's right.

Q. Are they still making the Reading battery, the Rebat brand?

A. That's right.

Mr. Ballard: I have no further questions.

Mr. Mason: Nothing here concerns me. I have no questions.

Mr. Kelaher: We have a few, your Honor.

Redirect Examination by Mr. Kelaher.

Q. Mr. Lingenfelter, you were asked on cross-examination if Reading batteries was nationally advertised and you stated no. However, isn't Reading batteries well known in the East?

1104 Mr. Mason: What kind of a question is that?

Mr. Ballard: I object to that question.

Mr. Kelaher: Is it advertised?

The Witness: Well, they did some extensive advertising in the Saturday Evening Post, I would say, a few years ago.

By Mr. Kelaher:

Q. So that would be national advertising, wouldn't it?

A. Sure.

Q. Up until—

Mr. Thompson: (Interposing.) Are we off the record?

Mr. Kelaher: No, we are on the record.

By Mr. Kelaher:

Q. Prior to the acquisition by Electric Auto-Life Company what was Reading Batteries, Inc., marketing area? Generally speaking.

A. Generally speaking we worked as far as the New England states, down South, I would say as far as Tennessee. Now, they had some accounts in those areas, they didn't have salesmen soliciting business in those areas—out as far as including Ohio, New York, and that section.

Q. Did you advertise Rebat batteries in your trading area?

A. No, they didn't go in for advertising too heavily in that, in newspapers and things of that sort, you mean?

1105 Q. Signs?

A. We had signs and distributor and dealer identification.

Q. Did you have road signs, too?

A. They didn't go in for road signs, no.

Mr. Kelaher: No further questions, your Honor.

Mr. Ballard: No further questions, your Honor.

Mr. Mason: No questions.

Hearing Examiner Kolb: That's all, Mr. Lingenfelser.

(Witness excused.)

Hearing Examiner Kolb: Do you want a recess now, gentlemen?

Mr. Dias: Please.

Hearing Examiner Kolb: We'll have a recess at this point.

(Thereupon, a short recess was taken.)

1106 Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: I would call Mr. Myers to the stand, please.

JAMES M. MYERS, JR. was thereupon called as a witness and having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. James M. Myers, Jr., and I live at 214 Sugartown Road, Devon, Pennsylvania.

Q. And were you at one time an Atlantic lessee dealer?

A. Yes, sir.

Q. During what period?

A. It started sometime in May of 1950, and it ended September first, I believe, of 1951.

Q. And where was your station located?

A. At the corner of Eagle Road and West Chester Pike, Minoa, or Havertown, if you want to call it that.

Q. In Pennsylvania?

A. Yes, sir.

Q. Did you invest your own capital in the station?

A. Yes, sir.

1107 Q. Approximately how much?

A. I would say around—well, I said my own—it was partly borrowed capital, but it was from my father and my own, and about, I would say, around \$7,000.

Q. Now when you began operations in May 1950, what TBA did you carry?

A. Well, Lee tires, Exide batteries, and I believe rubber products were Thermoid, and then just the other general run of polishes and all those things that you would have.

Q. And who was your supplier of TBA products?

A. Ernie Miller. Miller Automotive, I believe they call it.

Q. What was your reason for purchasing Lee tires, Exide batteries, Thermoid fan belts, and so forth from Mr. Miller?

A. Well, it was just—he handled the line for Atlantic and it was just understood that you purchased from him.

1108 By Mr. Kelaher:

Q. Did you attend training school at the time you opened the station?

A. Yes. I believe that I went to a training school, it seems to me it was for two weeks.

Q. Was that conducted by Atlantic?

A. Yes. A fellow by the name of Ed Krebs handled it and it was conducted at the corner of City Line and Con-schohocken Avenue, at the Atlantic station, in the back room.

Q. And was TBA mentioned at that training school?

A. Yes.

Q. Were any specific TBA products mentioned at the training school?

A. Well, I really don't recall.

1109 By Mr. Kelaheer:

Q. Prior to the time you became an Atlantic dealer, had you had experience in service station operations?

A. Yes, back many years before that I started with Esso, Standard Oil Company of Pennsylvania, as an employee. They didn't have dealerships in those days, and I worked in the service station and became a manager of a service station.

Q. About what year was that?

A. Well, I started 1930, I think, and about 1931 I took over as manager of the service station in Bryn Mawr and then from there I went to City Line and Bryn Mawr Avenue, which was one of their largest stations at that time.

Q. So that you were experienced as a service station operator?

A. Yes, I had a wonderful experience in the service station business.

Q. Now how long did you continue to carry Lee tires, Exide batteries, and the other TBA products you mentioned?

1110 A. Until the date when Atlantic changed over to Goodyear.

Q. And that was—

A. Which I can't recall the exact date. It has been four or five—four years ago, whenever it was.

Q. I show you Commission's exhibit 150, which was a letter sent by Mr. Colley to dealers, dated March 1, 1951, and ask you to read that, please.

A. Out loud?

Q. No, just to yourself.

A. All right, I have read it.

Q. Do you recall receiving that letter?

A. I don't want to say yes for the simple reason that I had letters, but if it was that letter, I couldn't say, it has been too long ago for me to identify that letter and be an honest man.

Q. But you did receive letters announcing the change, is that correct?

A. Yes, sir, that I did receive.

Mr. Kelaher: Your Honor, I think the record does show that this Commission's exhibit 150 was sent to all Atlantic dealers at that time.

Mr. Thompson: I will stipulate that is so.

By Mr. Kelaher:

Q. Now when the change-over to Goodyear TBA was announced by Atlantic, did any Atlantic representative make any statement to you concerning the matter?

A. Yes, just that we were changing over to Goodyear. I mean, we were told that we were changing to Goodyear and we were not going to have Lee any more.

Mr. Thompson: Without the proper identification, I move to strike again.

Hearing Examiner Kblb: Well, he said it was around the middle of 1951 when the change-over was made.

Mr. Thompson: Yes, sir, but the person who made the remark hasn't been mentioned.

Mr. Kelaher: If counsel will be patient, for one question, we will get to that.

By Mr. Kelaher:

Q. Who was the Atlantic representative who made that statement to you?

A. William Way.

Q. Do you recall the statement he made to you at the time, or the conversation?

A. No, I don't, sir. Just that we were changing, that was all, and no particular conversation, no excitement about it or anything.

Q. And did you then begin to purchase Goodyear TBA?

A. That's right.

Q. From whom?

A. Ernie Miller.

1112 Q. Now you stated at the time that you received a letter or letters from the Atlantic Refining concerning the change-over, is that correct?

A. Yes.

Q. And did such letters state that you had freedom of choice as to purchasing TBA?

A. I can't recall. You are speaking of the time of the actual change-over?

Q. Yes, at the actual change-over.

A. No, I don't recall it said freedom of choice or otherwise, at that particular point.

Q. Subsequent to that, did you receive a letter which stated that?

A. Yes, I did receive a letter later than that, stating that I had freedom of choice.

Q. Did you ever discuss that letter with salesman Way?

A. Yes, I did.

Q. What did you state to salesman Way?

A. I said "Bill, does that letter mean what it says?" and he said, "You try it and you will find out." That was the answer I received.

Q. So you continued to purchase Goodyear TBA?

A. That's right.

Q. Do you recall at one time that Atlantic used your station as a model station?

1113 A. I recall it very clearly.

Q. Do you recall the approximate time when that occurred?

A. All I can tell you is I would say the late winter or early spring of 1951.

Q. And would you just describe what transpired at that time, in your own words?

A. Well, there were four or five days where salesmen of the Atlantic Refining Company and what they called—I don't know what they were—fellows who worked on service stations, and helped the boys around to teach them different things, I don't know what they called them, but these men were brought in there, five, six or seven of them, and they worked to clean and scrub and paint and do all this sort of thing, and rearrange your inventory so it looks nice and all, coming to a point where, on this one particular lay, there would be certain gentlemen from Atlantic Refining Company come out there and just view this thing, as a model station.

I mean it was, everything was in place, in order, and that was the idea of the thing.

Q. Now was anything done with respect to TBA when they made your station into a model station?

A. Yes. Any items that I had, which I had very few of, which were foreign to the Atlantic ordinary TBA program, were not supposed to be in view.

Do you want me to go on, or do you want to question me?

1114 Q. Please go right ahead.

A. The night before this model station was to happen, which was to happen the next morning—by the way all the men were dressed in brand new coveralls, with bow ties and we were to look real pretty. So they asked me if they could remove these items from my place.

Q. What specific items are you referring to?

A. I had a few foreign tires, as I recall.

Q. What brand?

A. I think I had a couple U. S. Royals laying around and a few Lees left, which I hadn't sold from the time I had them, and they asked me if they could remove them, and I told them absolutely not to take anything from my place, but the next morning when I came in they were gone and I understood they were hauled around in the—some of the men's cars, in the backs of the cars.

And I didn't receive those back for several days, and some of the things there I am sure I never got back because at the time I was very upset about it. It was just one of those things.

Q. Now did they also take some accessories at that time which were not in the sponsored line?

A. Yes, but I can't recall what they were. There was a number of items taken.

Q. And they were put in the cars of these Atlantic representatives?

1115 A. One thing I can remember was taken out of there. I used to sell a lot of seals for front wheel bearings, and I had a case—in those days we were not allowed to sell those things, and I had a case of them on the wall and that was removed and brought back to me later.

Q. Do you recall the brand name of that item?

A. No, but I can find out for you. They are now in certain stations, I see them.

Q. Now you stated that these items that you have mentioned, the only items that were taken out were non-sponsored TBA items, is that correct?

A. That's right.

Q. Did the company ever reimburse you for any of the TBA they failed to return to you?

A. They claimed they returned it all, so there was no such thing as reimbursement.

Q. But according to your statement, you don't think they did return it all?

A. That's right.

Q. At the time of the change-over to Goodyear TBA, was your station identified with Goodyear signs?

A. Yes.

Q. And did you request such identification?

A. No, but if we were going to sell Goodyear, we certainly had to have some identification, which I just understood.

1116 Q. Now prior to handling Goodyear TBA, you stated that you handled Lee tires, Exide batteries; were you dissatisfied with Lee tires and Exide batteries?

A. No, I never was. And there was a good reason.

Q. What was the reason?

A. Well, Lee had a fine guarantee with them, and we had no guarantee except for faulty workmanship with Goodyear, but we had a road hazard guarantee with Lee tires, a very fine one, which people liked.

Q. Now, price-wise, how did Lee tires compare with Goodyear?

A. Just about the same. You see, I bought them all from Ernie Miller and as near as I know they were around the same. I don't recall that.

1117 By Mr. Kelaher:

Q. Was it your own choice to purchase TBA from Miller's Automotive?

A. No.

Q. Were you called upon by other sellers of TBA?

A. Oh, yes.

Q. Do you recall a Mr. Douglas Kevis, of Harris and Leonard?

A. Yes, sir.

Q. Did he call on you?

A. Yes, for the whole time I was there.

Q. Did you give him any of your recapping business?

A. I gave him all my recapping business.

Q. At that time were you solicited for recapping business by Atlantic's representatives, or by Mr. Miller?

A. No, because Mr. Miller didn't have any recapping up until the point I left. I left soon after that, before he got into recapping. I understood we were going to have it, though. I had heard there was going to be recapping.

Q. Now, did Mr. Kevis ever solicit the sale of new U. S. tires from you?

A. Yes.

Q. Do you recall—did you purchase such new tires from him?

1118 A. No, I didn't.

1119 By Mr. Kelaher:

Q. Did Mr. Kevis solicit business from you after the change-over to Goodyear TBA?

1120 A. Yes.

Q. And did he solicit business from you prior to the change-over to Goodyear TBA?

A. Yes.

Q. And did other jobbers and sellers of TBA solicit business from you both prior and after the change-over to Goodyear TBA?

A. Yes.

Q. Would you name some of those other suppliers?

A. The ones I recall, well, Harris and Leonard you have. John Stewart was one, he sold service station supplies such as towels and that sort of thing, brooms, mops, anything like that. Then there was Gaul Derr and Shearer, who has a very wide selection of anything to sell or for use I mean as tools or equipment in the service station.

And Aviation Auto Supply, was one who had a wide selection of anything you wanted in service station supplies or TBA. Then there was an Upper Darby Automotive; they are now out of existence.

Q. Do they solicit TBA business from you?

A. Yes.

Q. Both before and after the change-over to Goodyear TBA?

A. Yes, sir.

Q. Did you purchase TBA from them?

A. Very, very little. I mean just odd items that 1121 maybe I couldn't get from Ernie Miller.

Q. What kind of business relations did you have with Atlantic representatives? Were they cordial or—

A. For the first four months, yes.

Q. What happened after that?

A. Well, for many years I believe we had had no wars on gas, and they started after I was in there about four months, in the business. And it was a very severe drop in prices and it was suggested that I lower my price on gasoline, which I couldn't see to do.

Q. Who suggested that?

A. The salesman told me, Bill Way, told me I should lower my price and get in line with the other dealers.

Q. The Atlantic salesman?

A. That's right.

Q. Do you remember his name?

A. Bill Way.

Q. Go ahead.

A. So I asked him what was going to happen, was I going to stay there and go broke or what, and he shrugged his shoulders. So I told him unless they did something about it that I was going to do something about it. So he just smiled at me and the next day I proceeded, and I put a one page ad in the Havertownship News, advertis-

ing one quart of oil with every 10 gallons of gas. I also had four 4 x 8 signs put up on each side of my station, 1122 with the same information on it, on both sides, and then I proceeded to give these people the oil.

At first I was paying for it, but I kept my price up where it was, didn't drop it, and then if the price finally went down to where it was three cents below where I was selling then I would start to lower slightly, keeping it three cents all the time above and that was paying for this oil I was giving away. And then Atlantic came through with subsistence, which they told me—Bill Way and he came and told me unless I complied with their wishes, and brought my prices in line with the other dealers, I would not get the subsistence.

So I warned him he better discuss it with the company lawyer before he started to do that, take exception to me over other dealers, so nothing more was done and I did get my subsistence, which was used to pay for this oil to give to the clients or customers, and I used that for four months under terrific pressure by Mr. Lukens and Mr. Arnholt and Mr. Bowman, Bill Way and Pete Lonzono all were involved and came out there and gave me this terrible pressure and I refused to ever drop my price or do anything that would stop me from making money because I was making money when the rest were losing it and they were not going to tell me how to lose my money and that is what happened and that was the first trouble I had.

And then my relationship, of course, was very un-1123 cordial during that period. They were rough.

Q. Now were all the men you just mentioned Atlantic representatives?

A. Every one.

Q. Did anything occur after that with respect to your—did you have any further instances with Atlantic after that?

A. Well, not about that.

Q. Did you have any incident with respect to any other matter concerning station operations?

A. Yes. In the spring of 1951, sometime in there, I just can't recall dates, it is four years ago, but I had purchased or had given Bill Way an order one day for \$600 worth of oil, as I recall, of which there were 25 cases of Capital Motor Oil, which was their very cheap oil, sold in two-gallon cans, and that would be 75 cans, in other words, of oil.

Previous to that I had purchased larger quantities, but I had no place to put it and it would sit out around the building and would rust up and the cans would leak and I was taking a loss on it.

So I didn't want any more than that of it. And three days later, before this oil was received, I had a visit from Mr. Arnholt, and Bill Way and the TBA man, whose name I can't recall. It was George somebody. And he was the man who apparently sort of kept track of TBA for Atlantic. And Bill Way told me that when he walked in, 1124 they all walked in, and Bill Way told me that he would like to sell me one hundred cases of Capital Motor Oil. So I told him "I can't do that. I have just given you an order, I haven't received the oil yet, for \$600 worth of oil, including 25 cases of this motor oil, Capital," and I just couldn't see my way clear to buy any more and have it lay around the place.

In fact, they told me I could park it out around the driveway, and I said "Yes, I guess I could put it on the roof, too," but after Bill stopped talking this George started next. And I was very courteous to Bill Way, but I wasn't quite so courteous the next time, and I told that gentleman the same thing, and then Mr. Arnholt spoke to me and I was very discourteous and I told him that I had already told all three of them and if they had called on any

other place except an Atlantic station, they couldn't violate the man's ethics the way they were doing with me, and I was too busy to talk to them and please leave.

By Mr. Kelaher:

Q. Did Atlantic representatives ever look at your records?

A. We were supposed to keep a record at all times of our sales each month and the salesmen would come in once a month and ask for that book and look at the record of sales.

Q. And did you ever have any conversations with an Atlantic salesman concerning your records?

A. Oh, yes, we would have conversations, but I 1125 don't know what you refer to.

Q. Did your records include sales of TBA?

A. Oh, yes. I kept an accurate record of that.

Q. Now you stated that you left—let me ask you this first. When you first went into the station in May 1950, how long a lease did you have?

A. Three months.

Q. And then that would take you up to about September, 1950, and at that time what lease did you have?

A. Then I received a one year lease.

Q. At that time did Atlantic have a three-year lease?

A. I don't think so. That came later. As I recall, and it was, I think, after my time, in fact. I heard about it, but I don't believe they did.

Q. Now you stated that you left the station in September 1951. Would you please state the circumstances which led up to your leaving the station?

A. Well, the first thing that happened was approximately the first of August—I received a visit out at my home. I had been sick for several days but Mr. Arnhold, Mr. Lukens and Bill Way came over and they just walked in and sat down in the living room and handed me a piece

of paper saying that my lease was terminated as of September first. So I asked them if that was all there was to say, and they said "yes," and I said, "well then, that is fine." I will be seeing you, and they walked out.

1126 And so then I decided to go into Atlantic Refining and see if I could not reason with someone up near the top, which I did, and I got as far up as Mr. Bowman, who was there at that time, and he assured me I could do nothing and I was wasting my time there.

I asked him for reasons and the only reason I can recall that was given was that my place was not clean.

So I didn't say any more, but I went out and immediately had my 4x8 signs changed over to these words: "Atlantic has terminated my lease." Then I had a large "W H Y?" with a question mark, and then "Ask your Atlantic dealer, he knows." And I proceeded to stay there for the balance of that month until the time came for me to go.

And we left there 11 o'clock the last night I believe of the lease, and they had I think eight men out that day including a lawyer, they told me, and it was pretty rough sailing all day—

Mr. Thompson: (Interposing.) Who, me?

The Witness: You know, I believe it was. If you just smoked a pipe, I think it would be you.

By Mr. Kelaher:

Q. Now how did you gallonage run in the station?

A. When I opened, the first month I opened, we sold 40 or 41 thousand. I don't quite recall. It was over 40.

Q. Do you recall what Atlantic expected of a station that first month?

1127 A. They told me 24 and I had told them that I was sure it would pump 40 because I knew the corner very well and was familiar with that whole area.

1128 Q. Were other dealers after that station at the time?

A. Yes, I understood. I was told by Mr. Arnholt there were many after it and I was in the leather business, and I came in there and we had—I did a sales job with him, and told him what I could do and he went along. And I finally received word from him by telephone, I called him from Pittsfield, Mass. one day when he had told me to call and he said the place was mine, and that night I picked up the phone and called Chicago and resigned from my position in the leather business. And I came down there, very innocently.

Q. And now you started at 40,000. Did you increase your gallonage?

A. Yes, the gallonage reached almost 50,000 in the month of August before I left. I may qualify that. It may be July, I'm not sure. There was one month it was over 49,000, either July or August, possibly July. And the next month was very close to that. It had moved up close to a 10,000 increase over the year.

Q. And did you always pay your rent promptly?

A. There was no such thing as paying rent promptly. That was deducted from your gasoline.

Q. And were you in your opinion a good station operator?

A. I still think I'm the best one around.

Q. And you were never given a reason by Atlantic for terminating your lease?

1129 A. No, sir.

Q. Now did Atlantic encourage promotion deals during various parts of the year?

A. Yes.

Q. Would you tell us a little bit about that?

A. Well, the number one promotion was the day I went in there, when we had search lights beaming up in the sky

off a truck, using up a lot of electricity, by the way, and we had cigarettes we gave away, pack to every man and we had gardenias for the ladies—every lady, and all of that costs a lot of money and they also—Mr. Lomenzo suggested I have dancing girls on the driveway.

Mr. Thompson: I would like the record to show that that is the day I was at the station.

The Witness: They never were there.

Mr. Thompson: Neither was I.

By Mr. Kelaheer:

Q. Who paid for this?

A. That was paid for by the dealer, by me. And as I recall the figure, it came close to \$500 for all of that.

1130 Q. How much?

A. Around \$500.

Q. Did they have promotions after that of any kind?

A. Yes, we had another promotion which they came out there about—and I just don't recall the details of that promotion. It was more of a sign promotion or that type of thing, or advertising, which we helped pay for. They were supposed to pay for part and we were supposed to pay for part, and we would pay for a part and that ran maybe several hundred dollars for that. That was—I don't know what point that happened.

Then I was told in the spring of 1951 that I should put on another driveway promotion like the first one.

Mr. Thompson: Tell me by whom, would you please?

The Witness: Yes, that was by Bill Way, and I guess Bill Way was the only one I can recall. I know for sure. The rest I wouldn't know. There may have been others.

By Mr. Kelaheer:

Q. And the others would be Atlantic representatives, too?

A. If they did say that, and I don't want to say that because I might—I am not sure.

Q. What type of promotion was this one?

A. That was gardenias for the ladies and cigarettes for the men, I believe, again, that we went for, and we had that again, and—

Q. Who paid for that?

1131 A. I paid for that entirely myself.

Q. And did you need that type of promotion?

A. No, sir, I sure did not. Not with an increase of gallonage like I had and an increase in general business over the year, I needed no promotions or no advertising. I was having a job taking care of the business I had.

Q. So you only had this promotion at Atlantic's request?

A. That is exactly right.

Mr. Kelaher: No further questions.

Mr. Thompson: May we have a couple of minutes to consult counsel, your Honor?

Hearing Examiner Kolb: We will recess for five minutes.

(Whereupon, a short recess was taken.)

1132 Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Thompson.

Q. Mr. Myers, I was a little curious about this model station you considered.

A. Yes, sir.

Q. Did you mind your station being a model?

A. I didn't think I was going to mind it, but I found out that I did mind it terribly before I was finished.

Q. That happened in 1951, didn't you say?

A. Yes, sir.

Q. And the purpose of it was to have a lot of Atlantic people come out and view a model station?

A. That's right.

Q. They did come out and take a lot of pictures?

A. Not a lot, just two people.

Q. They were top brass?

A. I think Mr. Bowman, Mr. Lukens.

Q. Fairly high Atlantic officials?

A. I guess you'd call them high.

Q. And you recall that a lot of pictures were taken of the station?

A. I don't believe any were taken.

Q. You don't. Well, you don't recall pictures being taken?

1133 A. No, I don't. No, sir.

Q. You yourself are rather photogenic?

A. I'd rather have you decide that than me.

Q. Modesty prevents you from answering.

Was your picture taken that day with these people?

I have to withdraw the question—

Mr. Kelaher: Objection.

By Mr. Thompson:

Q. Would it refresh your recollection if I asked you if your picture was taken with these people?

A. No, it wouldn't.

Q. Would it refresh your recollection if I suggested to you that this station of yours having become a short time model was later used for advertising purposes? Do you recall anything of the kind?

A. No, sir.

Q. I am going to ask you a few questions about the circumstances surrounding the failure of the Atlantic to renew your lease on September 1, 1951. That was correct, wasn't it?

A. I believe so.

Q. Before I come to that, it's my recollection that your testimony was inadvertent in one respect in fixing a date. I think you said that the model station incident occurred the latter part of 1951 and that the record does so say—

A. No, I didn't say that. I said I thought that it 1134 happened—mind you, this is four years ago—and I did say that I thought it happened in the latter part of the winter or the early part of spring.

Q. Yes. Would it refresh your recollection as to the date if I suggested to you that the model station incident occurred before Atlantic had adopted the Goodyear plan and was a kind of a set up arrangement for advertising purposes?

A. No, I wouldn't want to say that. I have no recollection of whether it was before or afterward. That is just something I can't remember. It's impossible to remember things back that far as to months and dates.

I know it was in the spring or late winter.

Q. But the change-over wasn't until after the 1st of March '51, was it?

A. You'll have to tell me, sir; I can't remember that.

Q. You didn't recall receiving a letter dated March 1, 1951 from Mr. Colley which announced the change-over? That was shown to you by Mr. Kelaher.

A. Yes, the one you brought over here?

Q. Yes, sir.

A. That exact letter I just wouldn't want to say that I could remember. It's impossible to remember that long the particular wording or anything of a letter and if I said otherwise it might not be true.

Q. But this model station incident must have been 1135 just about that time because that announcement, you will recall, was in March of 1951.

A. Spring starts when?

Q. I can't remember that year very well, can you?

A. It could have been, I said in late winter or early spring. It could have been after that—I just can't tell you.

Q. All right, sir.

Now, may we direct your attention to a couple of months later, that is to say the summer of 1951.

A. Yes, sir.

Q. Before your lease expired and before Mr. Arnholt visited you you retained counsel, did you not?

A. I did not.

Q. You did not, sir?

A. I have never had counsel.

Q. Didn't Arthur E. Dennis represent you?

A. No, sir; never heard of him.

Q. Well, this is extraordinary. Didn't you ask him to call on Atlantic on your behalf?

A. Never heard of such a man.

Q. Were you a member of the Delaware County Dealers Association?

A. Oh, yes.

Q. And do you recall making a speech at a meeting 1136 of that association?

A. I believe I did.

Q. Do you recall Mr. Dennis as counsel for that association?

A. Well, see, he was counsel for the association, what he did was something else, but I did not retain counsel.

Q. Well, do you now recall Mr. Dennis?

A. I can't say yes. There was someone, and I can't recall if his name was Dennis or what took place at that time.

Q. How about Mr. Gorson, do you remember him? Another attorney in Delaware County.

A. Associated with the association, was he?

Q. Well, did Mr. Gorson ever represent you?

A. I don't know. I don't know the man's name. I never obtained counsel—private counsel from anyone. If it had anything to do—it could have been that someone from the association might have contacted Atlantic, there were a lot of—the association was trying, working for dealers at that time but they were not my counsel, my personal counsel.

Q. How about a Mr. Green. Did he ever represent you?

A. Yes, there was a Mr. Green that I spoke to, but he didn't represent me.

Q. Did he talk to Atlantic?

A. I believe he called them on the telephone and possibly stopped over there, but I mean he just did it as a friend and he told me there was nothing that could be done.

1137 Q. Did you authorize Mr. Green to threaten suit against Atlantic because of price discrimination against you?

A. Not that I recall.

Q. Did you assert a claim against Atlantic on the ground that they had not accorded you as much price protection during the price war as they had other dealers in your area?

A. No. I was concerned only with leaving the station at that time.

Q. Is it not a fact that when Mr. Arnhold came out to see you at your house he said in effect that it was obvious that you and Bill Way and he had not been getting along and it would probably be happier for both of you if the lease was just permitted to expire?

A. He probably did; but he didn't take into consideration my happiness. He made that statement.

Q. Didn't you reply to that and say that you agreed that you had not been getting along with Atlantic because

of these price matters and that you might as well just let it ride?

A. There was no question I wasn't getting along with them at all, hadn't been.

Mr. Thompson: That's all.

Mr. Mason: I have no questions.

Redirect Examination by Mr. Kelaher.

Q. Mr. Myers, with respect to the model station, 1138 did you request that your station be made a model station?

A. I certainly did not. It was Atlantic's request.

Q. And how many days were involved in changing the station over or in making the station a model station?

A. I would roughly say four or five days.

Q. And was your business disrupted during that time?

A. Yes, particularly the last day. The last day they painted my lifts red and no cars were allowed to come on my lifts that day because they would have left marks on the lifts. So, that's how my business was disrupted.

Q. Were you able to do a normal business on the days immediately prior thereto, when they were renovating the station or whatever they were doing to the station?

A. Fairly so. I mean, there were men trotting all around the place there and I was able to go along fairly well, the last day was the day that I couldn't do a normal business.

Q. Now, did Atlantic compensate you for the lost business or for the time involved?

A. No, and I suggested that, too, at the time, but there was no such thing.

Q. Now, what TBA identification was on the station when it was a model station?

A. Well, that gets back to the question that this gentle-

man (referring to Mr. Thompson) asked me which I'm not able to say, if it was prior to or after the change-over, 1139 you see, and I wouldn't want to say that, because I feel that it was after but I'm not sure. I can't recall dates for four years, and so it's impossible for me to answer that correctly.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Any further questions?

Mr. Thompson: No, sir.

Hearing Examiner Kolb: That's all, Mr. Myers.

(Witness excused.)

Hearing Examiner Kolb: Any further witnesses?

Mr. Kelaher: No further witnesses, your Honor.

Mr. Thompson: If your Honor please, off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

The record will show the hearing adjourned to reconvene Monday, July 1, at 10:00 a. m., Wilmington Armory, Tenth and DuPont Streets, Wilmington, Delaware.

Following Testimony Taken At Wilmington

1141 Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: I would like to call Mr. Sabo to the stand, please.

CARL SABO was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Would you please state your name and home address?

A. My name is Carl Sabo, 275 Birch Avenue, Elsmire Manor, Wilmington, Delaware.

Q. Mr. Sabo, are you presently employed with Keil's?

A. Yes, I am.

Q. What is your position with Keil's?

A. I am the manager of the tire department.

Q. Would you please describe generally Keil's business?

A. We are a company that consists of quite a few things. Tires is just one phase of our business. We are in the appliance business; we are in the air-conditioning business, retreading business, home improvement; we service automobiles; we are a Chrysler-Plymouth dealer.

Q. You mentioned tires. Do you sell tires?

1142 A. Yes.

Q. What brand of tires?

A. Goodyear.

Q. Do you sell tubes, also?

A. Goodyear tires, Goodyear tubes, Goodyear batteries.

Q. Are you a large distributor of Goodyear tires?

A. Well, I like to think we are.

Q. Are you the only distributor of Goodyear tires in this area?

A. In New Castle County; yes, sir.

Q. What is the marketing area of your tire department?

A. Strictly New Castle County.

Q. And that includes Wilmington and surrounding area?

A. Wilmington and surrounding area. I would say a radius of approximately fifteen miles.

Q. From a population standpoint that would be the most populous Delaware County?

A. That is correct.

Q. How many counties are there in Delaware?

A. Three.

Q. How long has Keil's been in business?

A. The business was organized in 1919.

Q. And you have been in business ever since?

A. That is correct.

Q. How long have you been with the company?

1143 A. Approximately sixteen years.

Q. That would be beginning 1941?

A. 1941, that is correct.

Q. How many salesmen are employed in the tire department?

A. In sales, five.

Q. And how many trucks does the tire department operate?

A. Seven.

Q. Are they modern trucks?

A. Yes.

Q. Do you have two-way communication?

A. We have a telephone system in the trucks.

Q. What is the purpose of that?

A. That is to be able to render quicker service.

Q. How are your salesmen compensated?

A. They are on a salary and commission.

Q. How many people are employed in the tire department; the office staff?

A. The office staff?

Q. Over-all, the whole staff?

A. Keil's wholesale staff would consist of approximately 200 people.

Q. Of that number how many are in the tire department?

A. Twenty-two.

Q. Would that be 22 in addition to the five salesmen?

A. No. That would include the five salesmen.

1144 Q. In how many buildings is Keil's located?

A. Five.

Q. Are they all in the City of Wilmington?

A. All within a small area, yes.

Q. Is your company competitive as to price, quality, and service with other sellers of TBA products?

A. Yes, we are.

Q. Are you competitive with Firestone?

A. Yes, we are.

Q. Are you competitive with Firestone as to tires and tubes?

A. I think we are; yes, indeed.

Q. Are you competitive as to batteries?

A. We are.

Q. Approximately what percent of Keil's business is devoted to the tire department?

A. I would say approximately perhaps about 12 or 15 percent over-all.

Q. Generally in dollars and cents what would that come to?

A. It would exceed a half million.

Q. A half million dollars?

A. Yes.

Q. The tire department alone?

A. Yes.

Q. Does your firm have recapping facilities?

A. Yes, we have.

1145 Q. Are there any Atlantic service stations in your marketing area?

A. Yes, there are.

Q. Approximately how many?

A. I would say, at a guess, approximately twenty. There could be a couple more or less.

Q. Would you state your position again? Are you manager, did you say?

A. I am manager of the tire department.

Q. Have you solicited new tire and tube business and battery stations from Atlantic stations?

A. Yes, we have.

Q. Going back, for how long a period have you done that?

A. I suppose, going back even before my time, I suppose they have been solicited, too. They have been solicited ever since I have been there.

Q. And have you been able to sell tires, tubes, or batteries to Atlantic stations on a regular stocking basis?

A. No. Let me qualify that. Only one case that I know of.

Q. Only one Atlantic station?

A. Yes.

Q. Prior to about March 1951, did you actively solicit tires and battery business from Atlantic stations?

A. Yes.

Q. At that time did you or have you handled accessories at any time?

A. Yes, back at that time we did.

Q. What accessories did you handle?

A. We handled everything in accessories. I wouldn't say everything but most everything like spark plugs, fan belts, radiator hose, batteries, tires, tubes, retreading.

Q. What brand of fan belts did you have?

A. Goodyear.

Q. What brand of fan belts and hose?

A. Goodyear.

Q. And I assume Goodyear batteries, and tubes?

A. Yes.

Q. Did you also carry a line of what is known as chemicals at that time—waxes and polishes?

A. Yes, we did.

Q. At that time were you able to sell Atlantic stations on a regular stocking basis?

A. Not on a stocking basis, no. We did sell Atlantic stations. Not on a stocking basis.

Q. At that time, prior to March 1951, did you at any time have what was known as a Keil's moving tire store?

A. Yes, we did.

Q. Will you please state what the purpose of that was, or what it was?

A. The purpose of it was to solicit strictly the gas 1147 station trade. It was somewhat of a moving van, a new truck, and we had it equipped with everything that we thought would be interesting to the service stations.

Q. Did you call on Atlantic service stations?

A. We called on all service stations.

Q. Over how long a period was such truck operated?

A. Approximately a year and a half.

Q. What was your experience with such truck?

A. Well, it wasn't too profitable. We finally discontinued the operation of the truck.

Q. At that time do you recall what brand of tires were being sold Atlantic stations?

A. Yes, they were Lee.

Q. Did Goodyear tire prices compare with Lee prices?

A. Not at that time, no.

Q. In what way?

A. Well, Lee's were much lower. I would say that they were 15 to 20 percent differential.

Q. Did your prices compare with Firestone prices at that time?

A. Yes.

Q. So that Lee prices were—

A. They were lower than Goodyear or Firestone at that time.

Q. Was that project eventually abandoned?

A. Yes.

1148 Q. At that time do you recall the service station identification in Atlantic stations?

A. Back around 1950-51?

Q. Yes.

A. They were identified with Lee.

Q. Back about that time did you attempt to sell Goodyear batteries? You attempted to sell all your TBA?

A. Yes.

Q. Was there a time when Atlantic service stations discontinued advertising Lee tires?

A. There was. I can't remember the exact date.

Q. Was it about March 1951?

A. I wouldn't remember that date, no.

Q. What service station identification appears in Atlantic service stations?

A. Today there is Firestone.

Q. Firestone tires?

A. That is right.

Q. Firestone batteries?

A. Yes.

Q. Firestone accessories?

A. That is correct.

Q. What tires are Atlantic service stations now selling? What brand of tires?

A. Firestone, I think.

1149 Q. What brand of batteries?

A. I would think Firestone.

Q. Would you think also it was the Firestone line of accessories?

A. Yes.

Q. What has been your experience since the switch-over to Firestone in Atlantic stations?

A. Business-wise?

Q. Business-wise, yes.

Mr. Correa: Will you read that?

(Question read.)

A. Frankly, I haven't seen any difference.

By Mr. Kelaher:

Q. Do you have any difficulty selling to Atlantic stations?

Mr. Correa: I object.

Mr. Kelaher: Strike that.

By Mr. Kelaher:

Q. What do you mean by that?

A. We have never been able to get into the stocking with Atlantic stations, whether it be Firestone or whether it be Lee.

Q. I believe you testified that your prices—you are competitive—

A. I would say we are competitive, yes.

Q. (Continuing.) —with Firestone.

1150 You stated earlier that you did sell on a stocking basis to one Atlantic station. Will you identify the station?

A. I think the person you were talking about is the Atlantic station on South Market Street and I think the man's name is Parag.

Q. What products did you sell to Mr. Parag?

A. We sold Mr. Parag tires, retreading, batteries, on a stocking basis.

Q. During what period were you able to do that?

A. Approximately October 1955 to March 1956.

Q. What do you consider a regular customer, a regular tire customer?

A. Do you mean a dealer?

Q. A dealer, yes.

A. To me a dealer would be the type of person that would stock your product.

Q. Would you consider advertising also important?

A. Yes, I would.

Q. Mr. Sabo, I believe you testified that your company does a recapping business, is that correct?

A. That is correct.

Q. Are you able to do recapping business with Atlantic service stations?

A. Yes, we do.

Q. You do recapping business with most of the 1151 Atlantic service stations?

A. With most service stations. Atlantic and others.

Mr. Kelaher: No further questions, your Honor.

Mr. Correa: If your Honor please, at this time on behalf of the respondent Goodyear I move to strike the testimony of this witness as against Goodyear on the ground that no connection has been shown between his testimony and any of the issues in the complaint affecting the respondent Goodyear.

Hearing Examiner Kolb: The testimony of this witness which involves Firestone will be received, subject to a motion to strike by Goodyear.

Cross-Examination by Mr. Correa.

Q. Mr. Sabo—

Mr. Kelaher: Excuse me. I understand Mr. Correa is about to cross-examine?

Mr. Correa: Yes.

Mr. Kelaher: If he is taking the position that he has no connection with Goodyear, what is his position?

Hearing Examiner Kolb: For the record so far, it is in there, his motion to strike.

Mr. Correa: It is a curious position on the part of counsel to take, because as long as the testimony remains in the record, even though it is subject to a motion 1152 to strike, I must cross-examine about it against the possibility that the motion to strike might be denied. A possibility, I grant you. It is inconceivable to anticipate, but in an abundance of caution.

By Mr. Correa:

Q. You have been in the tire business sometime?

A. Quite a long time.

Q. And you were employed by Goodyear for a number of years?

A. That is right.

Q. Your department does retreading?

A. Yes, we do.

Q. Is that an important part of your business?

A. Very important.

Q. Do you sell retreading to the service station market of your marketing area?

A. Yes, we do.

Q. You are pretty successful?

A. I think we are, yes.

Q. Would that, what I have called the service station market, include Atlantic service stations?

A. Yes.

Q. Do you sell most of the Atlantic service stations?

A. I would say we sell most of them; that is correct.

Q. In your area?

A. Yes.

1153 Q. That is, of the ones that buy retreads?

A. That is right.

Q. Do you sell most of the Atlantic service stations most of their retreading requirements?

A. That would be a hard question for me to answer.

Q. I take it you hope you do?

A. I would say that the Atlantic stations, my experience has been that they will buy from us and they will buy from others, too, in retreading.

Q. You said you also sell Goodyear tires and tubes to service stations in your area?

A. That is correct.

Q. Specifically to Atlantic service stations?

A. Not specifically; to all service stations.

Q. Is it the fact that you sell Goodyear tires and tubes to Atlantic service stations?

A. Yes, we have, that is correct.

Q. I take it from your answers on direct that the volume of such sales has not changed materially over the years?

A. No, it hasn't.

Q. That would be true going back to 1948 or 1947 or thereabouts?

A. That is correct.

Q. What percentage of your total business is with service stations in the sale of tires and tubes and batteries?

1154 A. I would say perhaps in service stations the total would be a half percent, or thereabouts.

Q. Service station business has never been an important part of your business?

A. No.

Q. Have you concentrated particularly on the service station business or not?

A. Well, we have, at one time. Recently it is strictly on retreading.

Q. Is retreading more profitable than the new tire business?

A. Yes, indeed.

Q. Is there a considerably larger profit making in it?

A. That is correct.

Q. You did mention a Mr. Parag, is that correct?

A. Yes.

Q. I am not sure that it is clear in the record. He was an Atlantic service station dealer?

A. He was an Atlantic dealer.

Q. And you sold him—

A. Goodyear products.

Q. On a stocking basis?

A. That is correct.

Q. How many salesmen do you have calling on service stations?

A. One, just one.

Q. How many trucks or delivery wagons do you 1155 have devoted to that business?

A. To that business, just to stations, gas stations?

Q. Yes.

A. Just one for that purpose.

Mr. Correa: I have no further questions.

By Mr. Thompson:

Q. Mr. Sabo, I represent the Atlantic Refining Company in this case. I have just two or three questions.

You said, sir, on direct, as I recall it, that the Atlantic stations sold Firestone TBA?

A. That is correct.

Q. What is your personal familiarity with the buying and selling habits of the Atlantic stations? Do you personally solicit them?

A. Do I personally solicit them?

Q. Yes.

A. No. I have in occasion been to them. But I don't personally solicit them.

Q. So that you have no personal knowledge of what particular items they are presently—

A. Outside of the reports that I get from the man that does solicit.

Q. From your one salesman?

A. Yes.

Q. Who, as I understand it, solicits all service stations?

1156 A. Yes.

Q. In New Castle County?

A. Yes.

Q. Approximately how many service stations would there be all together in New Castle County?

A. That is a question that would strictly be guess work on my part.

Q. It is a very large number?

A. Very large.

Q. Are you familiar with the Atlantic accounts that Keil's sells?

A. Some of them I am, yes.

Q. You are no longer engaged in selling accessories?

A. No.

Q. You gave that up about seven or eight years ago?

A. Somewhere about seven years, six or seven years, somewhere along in there.

Q. You mentioned only Mr. Parag as an Atlantic dealer who stocked Goodyear regularly?

A. He did at the time he was in business, yes.

Q. How about the Hill Atlantic station, at 505 South Market? Haven't they been stocking Goodyear for years?

A. Retreading, I think he has.

Q. New tires, too; don't they stock Goodyear tires?

A. Only on a pick-up basis like the other dealers.

1157 I wouldn't say that he has stocked, or identified with Goodyear in any way through advertising.

Q. What you mean by that is that he does not have the Goodyear sign on his station?

A. No; that's right.

Q. But he does stock and display Goodyear tires?

A. Not to my knowledge. He has bought Goodyear tires, but as far as on a stocking basis that I have never known of, for him to stock Goodyear tires.

Q. How about the Maier station on South Held Street, Wilmington? Are you familiar with that account?

A. No.

Q. Do you know whether Maier does or does not stock new Goodyear tires?

A. I don't have his name. I am not a bit familiar with him.

Q. Do you have the names of the Goodyear accounts who display and stock Goodyear recaps?

A. Do I have the names in the Atlantic stations?

Q. Yes.

A. Yes.

Q. A very large number of them, aren't there?

A. Quite a bit.

Q. In fact, most of them?

A. I would say most of them, that is correct.

1158 Q. Is it not true that today a number of the Atlantic stations are stocking Lee tires?

A. That I couldn't answer. I don't know.

Mr. Thompson: Thank you. That is all that I have.

Hearing Examiner Kolb: Are there any further questions?

Redirect Examination by Mr. Kelaher.

Q. Mr. Sabo, approximately when did your Keil's moving tire store operate?

A. Around 1950 or 1951, about a year and a half.

Q. Did Keil's moving tire store call on Atlantic accounts regularly at that time?

A. Yes.

Mr. Kelaher: No further questions.

Mr. Correa: No further questions.

Hearing Examiner Kolb: That is all, Mr. Sabo. Thank you very much.

(Witness excused.)

Mr. Diaz: I will call Mr. Stein, please.

Mr. Thompson: I haven't had a chance to talk to Mr. Correa since last Thursday. Could I have five minutes to chat with him before this witness goes on the stand?

Hearing Examiner Kolb: All right. We will recess for five minutes.

1159 Hearing Examiner Kolb: The hearing will come to order.

NORRIS STEIN was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Diaz.

Q. Will you state your full name and home address, Mr. Stein?

A. Norris Stein, 122 Homewood Road, Wilmington, Delaware.

Q. Were you at one time an Atlantic station operator?

A. Yes, I was.

Q. Did you bring some documents for me this morning, Mr. Stein?

A. Yes, sir. (Handing.)

Mr. Diaz: If counsel have no objections I will substitute photostatic copies. These are the documents we sent to you.

Mr. Thompson: Of course we have no objections, but perhaps the originals are more legible. The photostats on some of them are not.

Mr. Diaz: Your Honor, I would like to have marked for identification as Commission's Exhibit 317-A and B, an Atlantic lease dated the 27th day of July, 1954, executed by Mr. Stein and Atlantic.

1160 A document dated 7/26/54 as 317-C, entitled "Atlantic Housekeeping Standards."

As 317-D, a document entitled "Atlantic Housekeeping Rating."

And as 317-E, Atlantic franchise agreement dated July 27, 1954.

And as 317-F, an Atlantic agreement dated 1954 for the period July 26, 1954, to July 25, 1955.

(Whereupon, the documents referred to were marked Commission's Exhibit 317-A through F for identification.)

By Mr. Dias:

Q. Mr. Stein, I hand you documents marked for identification as Commission's Exhibits 317-A through F and ask you whether or not that is the lease agreement that you entered into with Atlantic in July of 1954, and the various franchise agreements, et cetera. Do you recall?

A. Yes, they are.

Mr. Dias: I would like to have marked for identification as Commission's Exhibit 318-A and B a two-page letter dated July 26, 1954, to Norris A. Stein, from R. S. Zinn, district sales manager.

(Whereupon, the documents referred to was marked Commission's Exhibit 318-A and B for identification.)

By Mr. Dias:

Q. I ask you, Mr. Stein, was this also part of your 1161 original leasing arrangements with Atlantic? Or did you receive that in the mail? Can you explain how you received that, 318-A and B?

A. I don't honestly remember.

Q. Referring to 317-A through F, those documents represent your original agreement with Atlantic. Is that correct?

A. Yes.

Mr. Dias: At this time I would like to offer it in evidence.

Mr. Correa: If your Honor please, I would like to state on the record that I have not—in the case of the last notice, your Honor will note that I did not make objections throughout his testimony, but rather made a motion to strike at the conclusion of his entire direct examination.

Unless your Honor prefers to have me do it otherwise, in the interest of not having to make an objection to every

question, I shall continue that procedure. Is that satisfactory?

Hearing Examiner Kolb: Yes.

Mr. Dias: Is this on the ground that it involves Firestone primarily?

Mr. Correa: That's right. That it has nothing to do with Goodyear.

Hearing Examiner Kolb: I think you had better make your objections to the exhibits separately.

Mr. Correa: I do object to the proffered exhibits 1162 on the ground that there is no showing that they relate in any way to the issues in this case involving the respondent Goodyear.

Hearing Examiner Kolb: The document will be received in evidence, subject to a motion to strike by Goodyear.

(Whereupon, the documents, heretofore referred to as COMMISSION'S EXHIBIT 317-A through F, were received in evidence.)

By Mr. Dias:

Q. I show you, Mr. Stein, Commission's Exhibit for identification 318-A and B. Will you tell us whether or not those documents related to your original agreement, lease agreement, with the Atlantic Oil Company?

A. Yes, they did.

Mr. Dias: I offer those in evidence at this time.

Mr. Correa: I have the same objection.

Hearing Examiner Kolb: The document will be received in evidence, subject to a motion to strike by Goodyear.

(Whereupon, the document, heretofore referred to as COMMISSION'S EXHIBIT 318-A and B, was received in evidence.)

By Mr. Dias:

Q. Mr. Stein, your original lease was dated sometime in July of 1954. How long were you in your station, and will you give us the address of that station, please.

1163 A. The address was Lancaster and Ford Avenues in Wilmington, and the time was two years and several days. Approximately three or four days over two years.

Q. Do you recall when you renewed your lease?

A. It was on or about August 1, 1955.

Q. Did you at that time receive a separate or new lease?

A. I believe I did.

Q. Were you able to find that document?

A. No. I didn't find it.

Q. Before you moved into your station originally—

Mr. Thompson: Mr. Dias, I have a photostat in my file if you would like to have it.

Mr. Dias: Yes, I would just as soon put it in.

I would like to have marked for identification as Commission's Exhibits 317-G and H, Atlantic lease arrangement dated July 29, 1955, between Atlantic and Mr. Stein.

(Whereupon, the document referred to was marked Commission's Exhibit 317-G and H for identification.)

Mr. Dias: I offer those in evidence at this time.

Hearing Examiner Kolb: The document will be received in evidence, subject to a motion to strike by Goodyear.

(Whereupon, the document, heretofore referred to as COMMISSION'S EXHIBIT 317-G and H for identification was received in evidence.)

1164 By Mr. Dias:

Q. Prior to the time that you executed the first contract with Atlantic, Mr. Stein, Did you go to a training school?

A. Yes, I did.

Q. Can you tell us when, approximately, you went to the training school?

A. It was around the 15th of June, 1954.

Q. How long did the course last?

A. I believe it was five weeks.

Q. Can you tell us where the course was conducted?

A. In Scranton, Pennsylvania.

Q. And who was it conducted the class, the school?

A. Atlantic Refining Company.

Q. Can you tell us a little bit about your training course? What did it consist of?

A. Well, it was a matter of indoctrinating a person such as myself, who had no experience with service station operation, into the knowledge and the necessary equipment to operate a service station, toward bookkeeping, salesmanship, products, advertising.

Q. Was the entire five weeks made up of classroom work?

A. No. Part of it was classroom work and part of it was actually working in a service station.

Q. How much work was spent in the classroom, and how much in the station?

1165 A. Pretty much half and half.

Q. Can you tell us a little bit about your classroom work? Was there any mention made of TBA?

A. Yes, sir. There was.

Q. Do you recall how often TBA was discussed?

A. Rather often.

Q. Would you place it at once a day, a couple of times a week, just about how often?

A. I couldn't place it accurately.

Q. Was there any emphasis on brand name?

A. Yes, there was.

Q. And what brand of TBA?

A. Firestone.

Q. Who made reference to the Firestone?

A. Both the people in operation of the school, and there was also a Firestone representative there one day who gave demonstrations and so on and so forth.

Q. Who was your instructor at the school?

A. Lew Sulyard—

Q. Can you spell that?

A. I'm afraid I couldn't tell you.

Q. Will you pronounce it again?

A. Sulyard.

Q. Do you recall any specific statements he made about TBA?

A. Yes, I do. There was not one but several specific statements made concerning TBA, that Firestone was our best bet. This was a class not only conducted for myself but for other dealers, other prospective dealers, other dealers presently in operation, and Atlantic employees were also in the class. That Firestone was our best bet. And also the remark was passed, which stands out vividly in my mind, that when things got rough, that Firestone would be our best bet; that the independent jobbers wouldn't be of any use to us or any help to us at all.

Q. Can you place roughly when it was that he made that statement?

A. No, I couldn't.

Q. Can you recall how many were in the class?

A. Around 20.

Q. You took your station in July of 1954. Did you carry TBA in that station?

A. Yes, I did.

Q. And when did you make your arrangements to carry TBA?

A. When?

Q. Yes.

A. On the day I arrived. The day I opened.

Q. The same day that you opened? Is that correct?

A. Yes.

Q. And with whom did you place an order for TBA products?

A. With the Firestone Salesman.

1167 Q. Were there Firestone supplies in the station when you moved in?

A. I can't honestly answer that. I don't know.

Q. What is it that you purchased from the Firestone salesman? Did you buy tires?

A. Tires. Just what it says—tires, batteries, accessories.

Q. That was all Firestone. And how long did you—at any time that you were in the station did you at any time buy other than Firestone?

A. Yes, I did. After about the first six months I deviated from the exclusive Firestone franchise.

Q. What did you purchase then?

A. I purchased any brand that I could get, for the best price.

Q. Did you say that was after the first six months?

A. Approximately.

Q. During those first six months did you receive any complaints from Atlantic as to the method of operation of your station, or appearance, or any other complaints from them?

A. Not complaints. Remarks.

Q. What type?

A. Well, periodic visits, and this should be painted and that should be cleaned, and the restrooms are dirty, and so on and so forth. Nothing in writing.

Q. After you started handling TBA other than
1168 Firestone, did you receive any complaints?

A. Yes, I did.

Q. What type of complaints did you receive then?

A. The one that stands out in my mind is that my Atlantic salesman made a remark to me one day that if I didn't handle Firestone products I wouldn't long be an Atlantic operator—dealer.

Mr. Thompson: May we have the date, Mr. Dias, and the name?

By Mr. Dias:

Q. Can you tell me approximately when that occurred? And the name of your Atlantic salesman?

A. I would say in the neighborhood of December 1954, somewhere in that time.

Q. December 1954?

A. Yes. And the salesman's name was Jones. Mr. Jones.

Q. After that occurrence in December 1954, were any other comments made by Atlantic personnel about these TBA products other than Firestone in your station?

A. No, sir.

Mr. Dias: I would like to have marked for identification as Commission's Exhibit 319, a letter dated June 22, 1955, signed by M. G. Davis, and addressed to "All Atlantic Dealers," entitled "No Forcing."

1169 (Whereupon, the document referred to above was marked Commission's Exhibit 319 for identification.)

By Mr. Dias:

Q. I show you that document, Mr. Stein, and ask you whether or not you recall receiving a similar letter?

A. Yes, I did.

Mr. Dias: I would like to offer the document in evidence at this time.

Hearing Examiner Kolb: The document will be received in evidence, with the right to move to strike by Goodyear.

(Whereupon, the document, heretofore referred to as

COMMISSION'S EXHIBIT 319 for identification, was received in evidence.)

By Mr. Dias:

Q. Mr. Stein, did you receive any complaints of any type thereafter from the Atlantic people? I would like to refresh your recollection by showing you Commission's Exhibit 250.

A. Yes, I did receive this letter.

Q. What was your answer?

A. Yes, I did receive that letter, by registered mail.

Q. Do you recall the complaint about your housekeeping? Can you tell us anything about the condition of your station at that time?

A. The condition of my station?

Q. Yes. Do you know what it was that brought 1170 about the warning letter?

A. Apparently Atlantic, as I recall, they had a gentleman called the "phantom" who travels around from station to station and makes a purchase and observes the condition of the station, the service and so on and so forth. And the dealers are rated by a numbered point system. I believe—I am not sure but I believe that letter was a result of a visit by this so-called phantom.

Q. What steps did you take after that to improve your station?

A. Steps that I took to improve my station?

Q. Yes.

A. None, specifically.

Q. Was there a reason for that, Mr. Stein?

A. Well, I believed that my station was in such bad physical condition that there wasn't much I could do to make it look any better.

Mr. Dias: I would like to have marked for identification as Commission's Exhibits 320-A through C, a letter

dated February 1, 1956, from Mr. Stein to Mr. Davis of the Atlantic Refining Company.

And for identification as 320-D, a letter dated February 2, 1956, from Mr. Davis to Mr. Stein, acknowledging receipt of that three-page letter.

1171 (Whereupon, the documents referred to were marked Commission's Exhibits 320-A through D for identification.)

By Mr. Dias:

Q. I ask you, sir, if you recall sending that letter to the Atlantic Company?

A. Yes, I did. And I recall receiving the answer.

1172 Mr. Dias: I would like to offer these documents in evidence at this time.

Mr. Thompson: I assume, sir, that the letter written by Mr. Stein to Mr. Davis is offered for the purpose of showing his state of mind as of February 1, 1956?

Mr. Dias: Yes.

Mr. Thompson: And not as proof of facts stated in it.

Mr. Dias: I offer this to show his state of mind, and the fact and condition that brought about that state of mind.

Mr. Thompson: But they are two different things Mr. Dias.

Mr. Dias: They may be but I think they are related.

Mr. Thompson: If the purpose of this letter is to show the state of mind of Mr. Stein on February 1, 1956, of course I have no objection.

Would your Honor care to look at it?

Mr. Dias: Your Honor, this is a document that was written by the witness a short time after he had received a warning letter to the effect that his housekeeping wasn't up to standard. This letter in my opinion not only shows the frame of mind of the writer but the facts as they ex-

isted at that time. There was no thought of a suit
1173 here. And the witness is available for cross-examination if the respondents care to cross-examine on that.

Mr. Correa: I object to it.

Mr. Dias: It is material and relevant.

Mr. Correa: I object, if your Honor please, on behalf of the respondent Goodyear, owing that it has no connection with or relations to the issues affecting the respondent Goodyear.

Mr. Thompson: If your Honor please, it is perfectly obvious that this letter is not a business entry, not the kind of a document which can be put in the record under the Federal Act. The witness is on the stand. If the sole purpose is to—if it is received for the purpose of showing his state of mind at the time he wrote it, I have no objection. If it is offered for the purpose of proving something didn't work around the station, the man is here and can tell us about it.

Hearing Examiner Kolb: He received a warning letter and this is a reply to the warning letter. He is here for cross-examination. I will overrule the objection and receive the document in evidence, subject to a motion to strike by Goodyear.

(The document heretofore marked COMMISSION EXHIBIT 320-A through D for identification, were received in evidence.)

1174 By Mr. Dias:

—Q. Mr. Stein, during the time that you were in the Atlantic station, were there any other inspections that you know of by Atlantic representatives?

A. Yes. There was one other that I recall specifically.

Q. What type was that, and when did it occur?

A. It was the same type of inspection.

Q. Did they also—

A. Excuse me. There were many other inspections by Atlantic personnel from Wilmington.

Q. What type inspections?

A. Apparently the station was inspected every time one of them walked on to the premises. But a purposeful inspection, I know of one other instance where there was a purposeful inspection.

Q. Will you tell us what that purpose was, and when it occurred?

A. It was the same thing, with this so called "phantom". The reason I know about it, because it happened to be a fellow that I knew quite well. And that is how I knew that he was there, otherwise I wasn't supposed to know that he was there.

Q. What was the phantom?

A. This was a, as I said, a fellow who drove into the station, made a purchase, and observed the condition 1175 and the service of the station.

Q. Was he an Atlantic employee?

A. Yes.

Q. What type of employee; do you recall?

A. I believed they are termed "service salesmen."

Q. Can you tell us when that occurred?

A. No.

Q. Did you maintain books at your station, Mr. Stein?

A. Yes, I did.

Q. What type entries did you keep in the books?

A. All types of bookkeeping entries. Purchases, sales.

Q. Of what specific items?

A. Of all my items—gasoline, tires, batteries, accessories, everything.

Q. Did you turn those books over to the Atlantic representative?

A. I offered them to the Atlantic representative on several occasions to look at, to peruse.

Q. Did they ever look at your books without your offering them to them.

A. I think it was a sort of an accepted fact that I didn't mind, and the books were looked at without my specific permission.

Q. Did you have credit card privileges at your station, Mr. Stein?

1176 A. Yes, I did.

Q. Were they important to you?

A. Yes.

Q. Can you give us some idea of the volume of business by credit card?

A. I can't give it to you exactly. I would say in the neighborhood of 20 or 25 percent.

Q. How did the credit cards operate? Let's take a case. After you make a sale by credit card, what did you keep, what did you send in to the company?

A. The latest credit card setup, there were two while I was in my station. The latest one was a matter of taking the credit card number, the customer's credit card number, recording it with the amount of the sale on a long sheet, totaling it, and mailing it to the Atlantic refining in Philadelphia. I believe it was in Philadelphia. I am sure it was. And then usually within three or four or five days I received a check for that amount.

Q. How did you pay rent at that station?

A. Every time I purchased gasoline.

Q. Were your credit sales subject to attachment for rent?

A. I wasn't aware that they were, but apparently they were.

Q. Did that occur?

A. Yes. Several times.

Q. Can you tell us approximately how often that happened?

1177 A. I don't want to perjure myself. I am not sure.

Q. Did it happen more than once?

A. Yes it did.

Q. Did you complain to Atlantic about that proceeding?

A. I certainly did. On several occasions.

Mr. Dias: I would like to have marked for identification Commission Exhibit 321, a letter dated February 6, 1956, from Mr. Howard M. Berg, attorney for Mr. Norris Stein, addressed to Mr. John Rule, Atlantic Refining Company; subject: deductions of rental payments from monies due on credit card sales.

And for identification as Commission Exhibit 322, a letter dated February 9, 1956, from Mr. E. E. Sickels to Mr. Howard M. Berg, Mr. Stein's attorney, acknowledging receipt of the letter dated February 6, 1956.

(The documents referred to were marked Commission's Exhibits 321 and 322 for identification.)

By Mr. Dias:

Q. I ask you if you recall those letters. (Handing.)

A. I do.

Mr. Dias: I would like to offer those letters in evidence at this time.

Mr. Correa: I object to the proffered exhibits on behalf of the respondent Goodyear.

Hearing Examiner Kolb: The documents will be
1178 received in evidence, subject to a motions to strike by Goodyear, as Commission Exhibits 321 and 322.

(The documents heretofore marked COMMISSION EXHIBITS 321 and 322 for identification, were received in evidence.)

By Mr. Dias:

Q. Mr. Stein, I refer you to Commission Exhibit 322 where it is indicated that amounts due on your rent were in one instance \$28.52, and \$2.42 in another.

Can you tell us whether or not the amounts that were due on other occasions that you mentioned were larger than those amounts?

A. No, I can't, offhand.

Q. You can't remember?

A. No, not offhand.

Q. When did you leave your station, Mr. Stein?

A. July 31, 1956.

Q. Can you tell us the reason you left? Did you terminate the lease of your own accord or did Atlantic terminate it?

A. No, I terminated it.

Q. And at the time that you closed out, did you have any TBA in stock?

A. Yes, I did.

Q. Can you tell us the brand of TBA that you had in stock?

1179 A. There were several brands involved.

Q. Did you have Firestone tires?

A. Yes, I did,

Q. Batteries?

A. Yes, sir.

Q. And accessories?

A. Yes, sir.

Q. And did you have other brands of the same products?

A. Yes, sir.

Q. Can you describe your closing out process, Mr. Stein? Did the Atlantic people introduce the new operator to you?

A. Yes. They supervised the closing out process by taking the three of us—the three of us took a physical inventory, and it was changed over from the inventory.

Q. Did the new operator purchase all your TBA supplies?

A. No, sir.

Q. Can you tell us what products he did not buy?

A. He didn't buy anything from me. Atlantic Refining did.

Q. What products did Atlantic buy from you?

A. They bought everything but repairing—parts for repairing, like ignition parts, brake parts, in one category; no tires. They bought no tires.

Q. How about Firestone tires?

A. No, sir.

Q. They didn't buy those?

1180 A. No, sir. I might interject. I sold the tires to the Firestone Company.

Q. How about your supply of batteries, and accessories?

A. They bought those. There were very few items they didn't buy. The tune-up parts, ignition parts, brake parts, and the tires, they did not buy.

Q. Did they inventory and buy on the same day?

A. Well it was agreed upon on the same day, or it may have been carried over to the next day, due to lack of time.

Mr. Dias: I think that is all.

Mr. Correa: I move to strike the entire testimony of this witness, if your Honor please, on the ground that it is not connected with nor related to any issue arising under the complaint herein affecting the respondent Goodyear.

Hearing Examiner Kolb: The testimony of this witness relating to Firestone will be received in evidence, subject to a motion to strike by Goodyear.

Mr. Thompson: May we have a minute to confer?

Hearing Examiner Kolb: Yes. We will have a short recess.

(A short recess was taken.)

1181 Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: I have no questions on behalf of Firestone.

Mr. Correa: I have no questions.

Mr. Kelaheer: May I have a short recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

Mr. Kelaheer: I would like to call Mr. Adams, please.

E. SCOTT ADAMS was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaheer.

Q. Will you please state your name and home address?

A. E. Scott Adams, 9 East Clearview Avenue, Hollyoak, Wilmington.

Q. Are you associated with Adams Parts?

A. I am a partner in Adams Parts.

Q. Who are the other partners?

A. Two brothers and a brother-in-law.

Q. Would you give us the names of your brothers?

A. William E. Adams; Joseph F. Adams, and William R. King.

Q. Would you please describe your company's business?

A. We are jobbers and distributors of automotive
1182 parts, supplies, equipment. We sell to the car dealers, service stations, fleets, general automotive trade.

Q. Did I understand you to say that you sold so-called hard parts?

A. Yes, that's right.

Q. And you also sell TBA items.

A. That's right.

Q. You do not handle tires?

A. We don't handle tires.

Q. What batteries do you handle?

A. Delco.

Q. And how long have you been handling Delco?

A. Since—

Q. Approximately.

A. November, 1955.

Q. And prior thereto did you handle any other brand of batteries?

A. Auto-Lite.

Q. And would you please state some of the principal brands of accessories you carry?

A. We have the AC line of spark plugs and oil filters; we have DuPont automotive chemical line; we have Good-year fan belts and hoses; and other automotive rubber products.

Q. When you say other automotive rubber products, are you referring to some of the Goodyear brand names?

1183 A. Yes, but not tires. They are hose items, I might say. Small mechanical hose.

Q. Do you carry any waxes and polishes?

A. Yes, we do.

Q. What brands?

A. We have DuPont; Johnson, and Prestone.

Q. Do you carry Prestone waxes and polishes?

A. We don't have Prestone wax and polish. We have Prestone cooling system products. Cooling system chemicals.

Q. Would that include antifreeze?

A. That includes antifreeze.

Q. And there are also other products in that line besides antifreeze?

A. That's right, service products.

Q. What is the sales area of your company?

A. We work the Wilmington area and Wilmington suburban area, and just a very small part of Maryland and Pennsylvania that is adjacent to Delaware.

Mr. Thompson: May I ask whether that means New Castle County?

By Mr. Kelaher:

Q. Does your sales territory include the entire State of Delaware?

A. No.

Q. Just sections of it?

1184 A. New Castle County predominantly. Almost entirely New Castle County.

Q. What counties do you get into in Maryland and Pennsylvania?

A. I can't tell you the counties.

Q. What are the towns?

A. The towns, we work Elkton, Maryland; Charlestown, Maryland. We work Oxford, Pennsylvania. That is principally the direction and the towns that we work.

Q. How many men does your company employ?

A. We employ two salesmen. My brother, who is a partner, also works a small territory.

Q. Which brother?

A. That is William E.

Q. And what class of customers are solicited for business?

A. Car dealers, service stations.

Mr. Thompson: He has already covered that, Mr. Kelaher.

The Witness: We cover the entire retail automotive trade.

By Mr. Kelaher:

Q. Is your company competitive as to price, quality and service with other sellers of batteries and accessories?

A. I believe we are, yes.

Q. Does your company solicit Atlantic Service stations?

A. Yes, we do.

1185 Q. Approximately how many Atlantic service stations are in your marketing area?

A. Of course, we don't have accurate information available, but our estimate is 40 to 50 in the Wilmington area. Wilmington and suburban area.

Q. Are there Atlantic service stations in the Maryland and Pennsylvania area?

A. Oh, yes. But we don't—we don't comb that area and we don't work it aggressively. We don't completely cover it.

Q. Do you work the Wilmington and suburban area aggressively?

A. Yes, we do.

Q. Are all Atlantic stations solicited for battery and accessory business?

A. Yes. Our policy is to call on all service stations.

Q. What has been the company's experience in selling hard parts to Atlantic stations?

A. We have been very successful selling hard parts and ignition parts, and brake lining. Items in that category, to Atlantic service stations.

Q. What has been the company's experience in selling batteries and accessories to Atlantic stations?

A. We have been able to sell the Atlantic stations bat-

teries and accessories, mostly on a pick-up basis. We haven't been able to my knowledge to sell any Atlantic stations as a stocking dealer on batteries. I have to 1186 be specific and say batteries. Some of our other TBA items we may sell them. I wouldn't have the information available on that.

Q. How long has your company been in business?

A. Since 1946.

Q. What is your position with the company?

A. I am a partner in the company and I act as more or less office and credit manager. I also get into the buying. We are a very closely knit organization and many of our operations are done as a group of partners rather than individuals.

Q. And do you also have conferences with your salesmen?

A. Oh, yes.

Q. Have any reasons ever been given as to why you only sell batteries and accessories on a pick-up basis to Atlantic stations?

Mr. Thompson: It is objected to as involving double hearsay.

Hearing Examiner Kolb: The question can be answered yes or no.

Read the question.

(Question read.)

A. Yes.

1187 By Mr. Kelaher:

Q. Have you ever yourself observed the TBA carried by Atlantic service stations?

A. Yes.

Q. What brand is carried by Atlantic service stations?

A. Firestone.

Q. Have you yourself observed the advertising of TBA items in Atlantic service stations?

A. It is predominantly Firestone.

Q. You handle Delco batteries. Have you ever seen any Delco signs in Atlantic service stations?

A. No, I haven't.

Mr. Kelaher: No further questions.

1188 Mr. Correa: I move to strike the testimony of the witness, if your Honor please, as against the respondent Goodyear, on the ground that it is not connected with or related to any of the issues in the case involving Goodyear.

Hearing Examiner Kolb: The testimony of the witness will be subject to a motion to strike on the part of Goodyear.

Cross-Examination by Mr. Thompson.

Q. Mr. Adams, your company has a number of competitors in New Castle County?

A. Yes.

Q. Would you mind telling us who some of your principal competitors are?

A. Taylor Auto Supply Company; Motor Car Service Company; Wilco Supply Company. They are our principal competitors.

Q. How about Durham Motorist?

A. Durham Motorist, yes.

Q. That is another one?

A. Yes, they are competitive.

Q. Motor Parts and Service?

A. Yes.

Q. Suburban Auto Parts?

A. Yes.

Q. That is rather a new company, is it not?

A. That is rather new, yes.

1189 Q. Don't the Chester suppliers also come to Wilmington a good deal?

A. I believe they come down here. I don't believe a good deal.

Q. Since your company doesn't handle tires, you don't offer recap service do you?

A. No.

Q. You stated, as I understood you, sir, that you have observed Atlantic stations in this area.

A. Yes.

Q. And from your observation noted that they carry Firestone?

A. Yes.

Q. You do not go on the street yourself and sell any of these accounts, do you?

A. No. I don't call on the trade to sell them.

Q. Are you familiar with the accounts that your company has among the Atlantic dealers? I mean, do you know who they are, if I ask you a question about it?

A. Oh, yes.

Q. May I ask you, as a generality, first, whether it is not true in the Wilmington area, in New Castle County, that all or substantially all of the Atlantic dealers carry TBA in addition to Firestone?

A. I would have to answer that in generalities. I would say handle them to, I would say, a much lesser extent.

1190 Q. Than Firestone?

A. Than Firestone.

Q. Is it not true from your observation that a large number of them carry Lee tires?

A. I can't answer that.

Q. Is it not true from your observation that a very large number of them carry Exide batteries?

A. I couldn't answer that as a large number. I think a few do.

Q. Is it not true from your observation that most of them carry accessories either other than or in addition to Firestone accessories?

A. I think most of them do carry other accessories to some extent, yes.

Q. Do you know the Nicholas DeLeo station?

A. Yes.

Q. That station stocks Lee tires, does it not?

A. I couldn't answer that.

Q. Do you know from whom that particular station operator buys accessories?

A. He buys considerable from us, due chiefly to the fact that he is close to us. In fact, he is running in and out of the store daily. But I don't know exactly what items he buys. I think they are mostly repair parts.

Q. That is what is called a lessee station, is it not?

1191 A. I believe it is, yes.

Q. Is not the same comment so with respect to James Donovan?

A. Yes.

Q. At Newport Gap Pike?

A. We sell him considerable.

Q. And also Norman Landis, on New Castle Avenue?

A. Landis, I am not familiar with.

Q. Do you know who his accessory supplier is?

A. I don't know the account at all.

Q. Do you solicit the account, do you know?

A. I can't answer that.

Q. How about the Maier's station—M-a-i-e-r. That is one of your customers, is it not?

A. Yes.

Q. They buy substantial amounts of accessories from you?

A. No, they don't. Very sparingly.

Q. But they are one of your customers.

A. They are one of our customers.

Q. I am now talking about accessories, not just hard parts.

A. He doesn't buy much of anything from us.

Q. How about Walter Mitchell, 1706 New Road, Forest Park, do you know him?

A. Yes. He buys considerable from us.

Q. The same thing is true with respect to Mr. Pavloski?

A. I don't know the account.

1192 Q. Front and Tatnall.

A. No.

Q. Don't you sell that account Champion spark plugs?

A. We don't sell Champion spark plugs.

Q. Do you know whether that company doesn't stock and sell and display Champion spark plugs?

A. I don't know the account at all.

Q. Do you know Mr. William A. White, Sr., with two Atlantic stations?

A. I knew I believe the son. I didn't know the father. And I just—just casual. I met him a couple of times.

Q. Do you solicit either of the White stations?

A. I believe they are out of business, although I am not positive of that.

Q. Recently they took a station at 3201 Concord Pike, Wilmington.

A. I am not familiar with that.

Q. How about Henry Weight—W-e-i-g-h-t? He is one of your accounts, is he not?

A. What was the name?

Q. W-e-i-g-h-t. It is either Weight (weight) or Weight (wight).

A. I am not familiar with that.

Q. New Castle Boulevard and Stamford Boulevard.

A. I am not familiar with that.

Q. That is in the City of New Castle. Do you cover the City?

1198 A. We cover New Castle, yes.

Q. But you are not familiar with that—

A. I am not familiar with that particular account.

Q. As a generality, is it not so that most of the Atlantic lessee dealers buy accessories from your company?

A. I wouldn't say that most do, no. I would say some do. But most of them don't.

Q. I hate to go over a long list with you, sir. You have already identified a number of your accounts.

How about Benedett—B-e-n-e-d-e-t-t—at 11th and Washington?

A. We don't sell them.

Q. Do you know who does?

A. No, I don't.

Q. Do you know whether or not Durham Motorist is their principal supplier?

A. I don't know. I can't answer.

Q. How about the Bennett station—B-e-n-n-e-t-t—Marsh and Wilson Roads, is that one of your—

A. We sell him small amounts.

Q. And the Bochenek station, on Naaman's Road?

A. We don't sell him.

Q. How about Bruton station, 2530 Concord Pike?

A. Yes, we sell him.

Q. That company stocks National batteries, does it not?

1194 A. I can't tell you. It is a new account, just recently opened. I am not familiar with what he buys.

Q. Do you know the C-o-n-t-o-m-p-a-s-i-s station?

A. That is in Hollyoak, or Gordon Heights.

Q. Hillcrest.

A. Yes. That's right. He operates under the trade name of Pete's Atlantic station. He obviates the situation.

Q. Do you recall that station?

A. Yes.

Q. He stocks Lee tires, doesn't he?

A. I can't answer that. I really don't know.

Q. The Foster station, at Pacific Avenue and Clayton, buys its fan belts and hose from you? Am I not correct?

A. I don't recall the station by that name. But at that address we have F&M Atlantic station, which suggests the same thing.

Q. That is probably Foster and somebody else?

A. And somebody else, yes. We sell him. I don't know what items.

Q. Do you handle the Gates line at all?

A. No, we don't.

Q. Do you sell Ted Hill? At 4800 Governor Printz Boulevard?

A. I don't know the account. No.

Q. You don't know whether you solicit him?

A. I presume that we should solicit him, although 1195 I am not definite. I can't say that we have.

Q. How about LaMarr—L-a-M-a-r-r, 40th and Washington?

A. We don't sell that account. When I say we don't sell him, it is entirely possible that any of those accounts could walk in our store with an order and purchase material. We don't sell them—

Q. Are you familiar with that station at 40th and Washington?

A. What did you say?

Q. Are you familiar with the station at 40th and Washington?

A. Yes, I am. I ride past it. I say I am familiar. I know where it is.

Q. Have you ever noticed it and noted what they do sell as you go by?

A. No, I haven't.

Q. Would it refresh your recollection if I suggested to you that they stock and display and sell Goodyear tires?

A. No, it wouldn't.

Q. You must know Nicholas Tavani.

A. Yes.

Q. He is a rather well known dealer, isn't he?

A. I believe he is one of the oldest Atlantic dealers in Wilmington.

Q. Advertises and stocks and displays both Lee and Exide, doesn't he? Instead of Firestone.

A. I can't tell you Lee. He does Exide.

1196 Q. Do you know Gerard VanSchaik?

A. Yes, I do.

Q. He is one of your accounts, isn't he?

A. Yes, we sell him considerable.

Q. And the same comment is true, is it not, with respect to Sidney Wallace?

A. No.

Q. Do you know that account?

A. We don't sell that account.

Q. Do you know who his supplier is?

A. No, I don't.

Q. How about William Whitman—W-h-i-t-m-a-n?

A. We sell him some.

Q. He is a Lee tire dealer, isn't he? Do you know the account?

A. I know the account, but I can't answer that question on tires.

Q. Also handles Goodyear accessories? Do you know?

A. Not to my knowledge.

Q. How about George Whorl—W-h-o-r-l—out of Holly-oak?

A. We sell him. I don't know how much, but we sell him.

Q. All of the dealers that I mentioned ~~are~~ what you call lessee dealers, are they not?

A. That's right. Of course, when I said we sold them, I didn't—I wasn't specific as to what type of items.
1197. Some cases I don't know.

Q. You sell not only hard parts but also accessories to substantially all of the contract dealers in this area, do you not?

A. What do you mean by contract dealers?

Q. Those who either own their own stations or lease stations from people other than Atlantic Refining.

A. Yes.

Q. There are a large number of such accounts, too, are there not?

A. Yes, there is.

Q. You don't handle Wix filters, do you?

A. No.

Q. Do you know the Baird station at Farnhurst?

A. Yes.

Q. That is one of your accounts?

A. We sell him.

Q. Are you familiar with that particular station, Mr. Adams?

A. I would say yes, I am fairly familiar with it.

Q. Until fairly recently they didn't even sell Firestone tires, did they?

A. I can't answer that on tires. I am familiar with the account in the sales I see moving through for him.

Q. Do you sell him Exide batteries?

A. No, we don't.

1198. Q. Just accessories?

A. We don't sell him batteries.

Mr. Kelaher: The witness testified that he doesn't handle Exide batteries.

By Mr. Thompson:

Q. I beg your pardon. Delco.

A. We don't sell him Delco, to the best of my knowledge. We don't sell him as a stocking deal, I will put it that way.

Q. How about the Graybeal station, at Glasgow?

A. No, we don't sell him.

Q. You don't get over to Newark, do you?

A. Newark, Delaware?

Q. Yes.

A. Yes, we work Newark.

Q. Aggressively?

A. Not aggressively, no. What we term high-spot it.

Q. Do you have any particular Atlantic accounts over there at Newark that you can now recall?

A. I don't recall any stations in Newark.

Q. How far away is Newark from Wilmington?

A. I think about 12 miles.

Q. How far is New Castle, just to get my geography straight.

A. Three or four.

Q. Is it that close?

A. It is closer than Newark.

1199 Q. Is Mr. Dashper—D-a-s-h-p-e-r—one of your salesmen?

A. Yes, he is.

Q. What territory does he have, so far as batteries and accessories is concerned?

A. Wilmington, Newark, Newark, Delaware, New Castle. That would be the points of his territory. It covers—

Q. How about your brother, Mr. William Adams? What territory does he cover on batteries and accessories?

A. He works a few accounts in Wilmington, Oxford, Pennsylvania. That is about it.

Q. Is he on the street much or in the office most of the time?

A. About half the time he is on the street.

Q. Mr. Dashper is on the street—

A. Entirely.

Mr. Thompson: Thank you very much. That is all that I have.

Mr. Correa: No questions.

Redirect Examination by Mr. Kelaher.

Q. Mr. Adams, you stated on cross-examination that you sold to a James Donovan. I believe you answered that you sell considerable. What is it that you sell to Mr. Donovan?

I will rephrase the question. Do you sell hard parts or batteries and accessories?

1200 A. I think we sell predominantly hard parts to him, items such as brake lining and ignition.

Q. And the same question was asked you with respect to an Atlantic dealer named W. Mitchell. What do you sell him?

A. I believe our sales to Mitchell is entirely hard parts and ignition.

Q. Just for the record, Mr. Adams, if I didn't ask you: What is the address of your business?

A. 1601 Governor Printz Boulevard.

Q. Wilmington?

A. Wilmington, 2.

Q. You were asked about your sales to quite a large number of Atlantic dealers. As to some you stated that you did make sales and as to others you stated that you didn't, and so on. But as to those to whom sales were made, do you sell hard parts to such accounts?

A. Predominantly, yes.

Q. Predominantly hard parts?

A. Yes.

Q. And not batteries and accessories, is that correct?

A. Batteries and accessories to a far lesser extent. Most of the batteries and accessories we sell we term a pick-up basis.

Q. Do you sell any batteries and accessories to the Atlantic dealers named on what is known as a stocking basis?

1201 Mr. Thompson: That has been answered before. This is improper redirect examination.

Hearing Examiner Kolb: I think probably it is a question that you asked and that the witness has answered.

Mr. Kelahe: If he has answered—

By Mr. Kelahe:

Q. Why don't you answer it again?

The Witness: Ask it again, I missed it.

(Question read.)

A. Not to my knowledge.

By Mr. Kelahe:

Q. You were asked about so-called Atlantic contract dealers on cross-examination. I think that term was defined to you by Mr. Thompson. I am not too clear on your testimony with respect to those contract dealers. Do you sell hard parts to such dealers?

A. Yes.

Q. Approximately how many contract dealers do you have?

A. I believe before I said considerable, because I didn't understand the question. In the case of Atlantic, there would be comparatively few.

Q. And do you sell batteries and accessories to such Atlantic accounts?

A. I can't answer that possibly. I don't know.

Q. Offhand, right now you know of no Atlantic 1202 contract dealer to whom you sell batteries or accessories, is that right?

A. No, I don't know of any.

Mr. Kelaher: No further questions.

Recross-Examination by Mr. Thompson.

Q. You testified over my objections that salesmen have reported to you that you couldn't sell batteries to Atlantic stations because of pressure?

Mr. Kelaher: That was stricken.

Mr. Thompson: I withdraw the question. That is all.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all, Mr. Adams.
Thank you.

(Witness excused.)

Mr. Kelaher: I suggest we adjourn until 2:00 o'clock.

Hearing Examiner Kolb: The hearing will be adjourned until 2:00 o'clock.

(Thereupon, at 12:50 p. m., the hearing was adjourned, to reconvene at 2:00 o'clock, p. m., this day.)

1203

Afternoon Session.

(2:10 P. M.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: I would like to call Mr. William E. Adams, please.

WILLIAM E. ADAMS was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and address?

A. My name is William E. Adams, 710 Woodsdale Road, Belleview Manor, Wilmington.

Q. Are you a partner in the firm of Adams Parts?

A. Yes, I am.

Q. What is your position with Adams Parts?

A. I am in charge of sales in our trading area.

Q. How long have you been in charge of sales?

A. Since the company was founded; approximately ten and a half or eleven years ago.

Q. Are you a brother to Mr. E. Scott Adams?

A. That is correct.

Q. Do you supervise the selling activities in your 1204 firm's entire marketing area?

A. Yes, I do.

Q. Could you approximate the number of Atlantic service stations in your company's marketing area?

A. I would say there are approximately 40 to 50.

Q. Are you referring to the Wilmington area?

A. I am referring to the Wilmington and Wilmington suburban area.

Q. As I understand your brother's testimony your firm also gets into adjacent Maryland and Pennsylvania areas, is that correct?

A. We do, but we actively work Wilmington and suburban Wilmington. The outside area is more or less what we term high-spotted. We call on large accounts only.

Q. Have you personally contacted Atlantic service stations over the years that you have been with Adams Parts?

A. Yes, I have.

Q. At the present time how many salesmen do you have, in addition to yourself?

A. We have two.

Q. Do they actively solicit service station accounts?

A. Yes, they do.

Q. Do you today actively solicit service station accounts?

A. I do.

Q. What has been your experience in selling battery and accessory items to Atlantic service stations?

A. We have been rather unsuccessful. We naturally can't put our finger on exactly why, but we have been unsuccessful in recent years.

Q. During that period have you been selling hard parts to Atlantic stations?

A. Yes, we have been much more successful selling them what we term hard parts.

Q. Do you recall calling on an Atlantic dealer by the name of Robert Miller, Lancaster and Ford Avenue, Wilmington, Delaware?

A. Yes.

Q. Did you sell batteries or accessories to Mr. Miller?

A. Yes.

Q. What brand of batteries did you sell to Mr. Miller?

A. At that time we were selling and distributing Auto-Lite batteries.

Q. Would you give us the approximate time that you have reference to?

A. I would say it was approximately 1932.

Q. For how long a period did you sell Auto-Lite batteries to Mr. Miller?

A. I would approximate a year and a half.

Q. Do you recall approximately how many batteries you would average a month selling to him?

1206 A. He was an average battery dealer. I might say approximately ten batteries a month.

Q. What was the price per unit? Would you have any idea?

A. That is going back five years ago. I would say the approximate price was in the vicinity of \$11, depending on the type of battery.

Q. Did you sell accessories to Mr. Miller at that time?

A. Yes, I did.

Q. Do you recall any of the accessory items that you sold to him?

A. Fan belts, radiator hose, some polish, bulbs.

Q. Was Mr. Miller purchasing Auto-Lite batteries on a stocking basis?

A. Yes, he was.

Q. Did he continue to purchase Auto-Lite batteries from you on a stocking basis?

A. No. I lost the account.

Q. You lost the account?

A. I lost the account.

Q. Did Mr. Miller ever give you a reason why he stopped buying Auto-Lite batteries from you on a regular basis?

A. He merely told me, "Bill, I can't buy batteries from you any longer."

Q. Did he state which batteries he was going to buy?

A. Yes; Firestone.

1207. Q. After that conversation did he purchase Auto-Lite batteries from you on a regular stocking basis?

A. No.

Q. Did his volume of accessory purchases remain the same after that conversation?

A. No. They were lower.

Q. Are you familiar with what is known as service station identification in Atlantic stations?

A. Yes, I would say I was.

Q. Referring to the outdoor signs and window valances?

A. Yes.

Q. What type of service station identification have you observed in the Atlantic service stations?

A. In Atlantic service stations?

Q. Yes.

A. I would say predominantly Firestone.

Q. Have you observed the batteries carried by Atlantic service stations? The brand?

A. The storage batteries?

Q. Yes.

A. Yes. The majority of them I would say, handle Firestone.

Q. What has been your experience with respect to selling new Atlantic service stations? Let's take new Atlantic service station dealers to be more accurate.

1208. A. I would say they are rather difficult to sell. Batteries or accessory items. However, we are somewhat successful in selling them hard parts.

Q. Have you noted what batteries and accessories are carried by these new dealers, new Atlantic dealers?

A. Atlantic dealers?

Q. Yes.

A. I would say, predominantly Firestone.

Q. Do you recall whether such new station dealers were stocked with Firestone TBA at the commencement of their business?

A. Do you mean by that the day they open up, for doing business with the public?

Q. Yes.

A. Yes, I would say most of the times they are.

Q. Mr. Adams, you stated that you were selling accessories to Mr. Miller, such as fan belts, oil filters, et cetera. What brand of fan belts were you selling at the time?

A. At that time we were selling Thermoid.

Q. What brand of radiator hose?

A. Thermoid.

Q. Do you recall the oil filters?

A. The oil filters I believe at that time was AC, same as they are today.

Q. What line of chemicals were you selling at that time?

1209 A. We were selling primarily Hollingshead.

Q. Is that the Whiz line?

A. The Whiz line.

Q. You stated that after a conversation you had with Mr. Miller your accessory sales declined. Do you recall what accessories he was purchasing at the time, or what other source of supply he had for accessories?

A. Other than myself?

Q. Yes.

A. Of course he may have had other jobbers supplying him. But I think the larger percentage of his accessory purchases were probably Firestone.

Q. State the number of delivery trucks your firm has.

A. We have two.

Q. How often do you make deliveries?

A. We make three deliveries a day in the Wilmington area.

Q. Three deliveries a day in the Wilmington area?

A. That is correct.

Q. How does such delivery service compare with the delivery service of Firestone stores, if you know?

A. I can't answer that. I don't know Firestone's delivery schedule.

Mr. Kelaher: No further questions.

Mr. Correa: I move to strike the testimony of this witness against the respondent Goodyear on the 1210 ground that it is not shown to be connected with or related in any way to the issues arising under this complaint as respects the respondent Goodyear.

Hearing Examiner Kolb: The testimony of this witness will be received subject to a motion to strike by Goodyear.

Cross-Examination by Mr. Ballard.

Q. Mr. Adams, I believe your brother told us that you were on the street about half the time, is that right?

A. That is correct, approximately.

Q. Is that in the Wilmington area mostly?

A. Mostly; yes, sir.

Q. I think you do get up to Oxford, Pennsylvania?

A. That is correct; yes, sir.

Q. Do you have any idea how many accounts you cover all told?

A. That I cover myself?

Q. Yes.

A. That is on a regular contact basis, or just spasmodically dropping in to see them?

Q. On a regular basis?

A. On a regular basis I would say I cover roughly about 18 accounts.

Q. What do you call a regular basis, once a week?

1211 A. Once a week.

Q. How many are there on a spasmodic basis?

A. I cover, from time to time, practically every account we have on the books; I would say roughly around—that is, of any size—roughly around a hundred.

Q. Out of your 18 accounts, I suppose most of those are car dealers and garages?

A. The majority of them are car dealers, State of Delaware, and rather large potential accounts.

Q. Are there any service stations in those 18?

A. Yes.

Q. Which ones?

A. Practically the only ones I call on are Standard Oil stations.

Q. In other words, you don't have any Atlantic stations in those 18?

A. No, sir.

Q. Where do you get your familiarity with the status of Atlantic accounts?

A. We do have, of course, quite a few Atlantic stations on our books that are called on by the other salesmen, and I do stop in to see them occasionally.

Q. You just stop in to sort of pass the time of day with them?

A. That is correct, more or less.

1212 Q. Mend your fences, I believe the politicians call it?

A. Yes, sir.

Q. Mr. Dashper is primarily in the Wilmington area, too, is he? The city part of Wilmington?

A. Primarily; yes, sir. He does cover Delaware City, Port Penn.

Q. I imagine he visits his service stations much more frequently than you do?

A. His regular accounts he visits once a week.

Q. I think you said that as far as signs go, the stations

were predominantly Firestone, is that right? The Atlantic stations?

A. The Atlantic stations.

Q. I guess the ones that aren't Firestone are mostly Lee, aren't they?

A. I can't answer that. I don't know.

Mr. Ballard: I have no further questions.

Mr. Correa: I have no questions.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all, Mr. Adams. Thank you very much.

(Witness excused.)

Mr. Kelaher: Your Honor, we have another witness but he won't be able to appear until 3:45. I move we adjourn until that time.

1213 Hearing Examiner Kolb: Is that the only witness you have?

Mr. Kelaher: Yes, the only witness.

Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: We will recess until the witness gets here.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Commission Exhibit 273 is withdrawn as it already appears in the record as Commission Exhibit 248-B.

(The document heretofore received in evidence as Commission Exhibit 273 was Withdrawn.)

Mr. Kelaher: I would like to call Mr. Sullivan.

THOMAS J. SULLIVAN, JR. was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Thomas J. Sullivan, Jr. Sometimes I go by that. Sometimes I am listed as Sullivan. My home address 1214 at the present time is 11 Monterrey, Brookside, Newark, Delaware.

Q. Were you at one time an Atlantic lessee dealer?

A. That is correct.

Q. During what period did you operate the station?

A. From the third of November, 1953, to the night of the—I believe it was the 23rd of October, 1954.

Q. Mr. Sullivan, I hand you a document identified as Commission Exhibit for identification 323-A and B and ask you to state what it is?

A. This is the lease under which I assumed the proprietorship of the station.

Mr. Kelaher: Mr. Examiner, I offer Commission Exhibit 323-A and B in evidence..

Mr. Mason: I object on the grounds of lack of connection with respondent Goodyear.

Hearing Examiner Kolb: The document will be received in evidence, subject to a motion to strike by Goodyear, as Commission Exhibit 323-A and B.

(The document heretofore marked COMMISSION EXHIBIT 323-A and B for identification was received in evidence.)

Mr. Kelaher: If agreeable with counsel, we will substitute a photostatic copy for the original.

Mr. Ballard: That is agreeable.

By Mr. Kelaher:

Q. I show you Commission Exhibit for identification 324-A and B and ask you to state what it is, Mr. Sullivan?

A. This is—I don't know what you would call it, a document or what you would call it, but it is an outline of the Atlantic Refining Company housekeeping standards on class 2 locations, which is the type station that I assumed the dealership of. And it has the first statement on the page, it says this: "Paragraph 7 of the B-3191 lease of the Atlantic Refining Company provides as follows:" and then it goes on and states the provisions of the housekeeping standards.

Q. This then is a part of the lease that you signed, is it not?

A. I assume that that is what it is, yes.

Mr. Kelaher: Your Honor, I now offer Commission Exhibit 324-A and B into evidence.

Mr. Mason: Goodyear has the same objection.

Hearing Examiner Kolb: The document will be received in evidence, subject to a motion to strike by Goodyear.

(The document heretofore marked COMMISSION EXHIBIT 324-A and B for identification was received in evidence.)

By Mr. Kelaher:

Q. Mr. Sullivan, I now show you Commission Exhibit for identification 325 and ask you to state what it is?

A. This is an agreement that I made with the 1216 Atlantic Refining Company, or that they made with me, that I was able to accept credit cards.

Q. That is a credit card agreement?

A. That is right.

Mr. Kelaher: Your Honor, I offer Commission Exhibit 325 into evidence.

Mr. Mason: Same action as to Goodyear.

Hearing Examiner Kolb: The document will be received in evidence, subject to a motion to strike by Goodyear.

(The document heretofore marked COMMISSION'S EXHIBIT 325 for identification was received in evidence.)

By Mr. Kelaher:

Q. Mr. Sullivan, I now show you Commission Exhibit for identification 326 and ask you to state what it is?

A. This is a list of the inventory of the location that I assumed, and the inventory that is listed on this is the equipment that belongs to the Atlantic Refining Company that was in the station.

Mr. Kelaher: I offer Commission Exhibit 326 into evidence.

Hearing Examiner Kolb: The document will be received into evidence, subject to a motion to strike by Goodyear.

(The document heretofore marked COMMISSION'S EXHIBIT 326 for identification was received in evidence.)

1217 By Mr. Kelaher:

Q. Mr. Sullivan, I hand you Commission exhibit for identification 327 and ask you to state what it is.

A. That is an Associate Dealer Agreement with the Firestone Tire and Rubber Company. It authorized me to buy and sell Firestone products.

Q. Were you an Atlantic lessee dealer at the time you entered into this contract?

A. That's right, yes.

Mr. Kelaher: I offer Commission Exhibit 327 for identification into evidence at this time.

Mr. Ballard: Mr. Kelaher, I assume that when you

make photostatic copies that you will make some for the respondents as well?

Mr. Kelaher: I will be happy to.

Mr. Mason: Same objection on the part of Goodyear.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 327, subject to a motion by Goodyear to strike.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT NO. 327 for identification, was received in evidence.)

Mr. Kelaher: It is the understanding of counsel that photostatic copies will be introduced for all exhibits just referred to, 323-A through 327.

1218 By Mr. Kelaher:

Q. Did you attend Atlantic training school?

A. Yes, I did.

Q. Where was the training school located?

A. At the time the training school was located in Allentown, Pennsylvania.

Q. How long a training period did you receive?

A. I believe it was a six weeks' school.

Q. Was TBA discussed at the training school?

A. Yes.

Q. Any particular brand of TBA?

A. Firestone.

Q. In what way was that discussed?

A. Well, there were Firestone representatives who gave instruction in the school on sales procedures and sales promotion, tires, batteries, and accessories, on Firestone items.

Q. When you opened your station did you invest any capital in it?

A. Yes, I did.

Q. How much?

A. A thousand dollars.

Q. Did you receive a loan from Atlantic?

A. Yes, I did.

Q. Approximately how much?

A. \$3,000.

1219 Q. Did you receive that in the form of cash or just how was that operated?

A. The day that I took over the station I was accompanied by a representative, by two representatives of the Atlantic Refining Company, Mr. Jones and Mr. Jordan, and along with the out-going dealer we covered everything in the station, and I bought all of his equipment and what few items that he had for resale I bought from him, all that I wanted to purchase from him. Those items that I did not desire to buy, naturally I didn't buy.

In regard to the \$3,000, I am not sure whether some of the accessory items that I bought at the time were paid for through this loan or now. However, every piece of equipment that I bought from the out-going dealer was paid for with this loan.

Q. You received a certain amount of it in stock, equipment, and so forth, and the balance was given to you in cash?

A. Yes. In fact, if I recall correctly, the balance, as close to as possible, was given to me in gasoline.

Q. The balance was given to you in gasoline?

A. Yes.

Q. So you received very little if any cash?

A. Yes, but there is a possibility—you see, I can't give you an exact figure, because it has been so long, I am not too familiar with the exact figure. However,
1220 there was a considerable amount of gasoline that I purchased at that time because the out-going dealer's tanks were rather low. And naturally that is why I was

there, to sell gasoline, and other things, and I had to have it, and it came out of that loan that I got from Atlantic.

Q. What brand of TBA did you begin to carry when you began your operations?

A. Firestone.

Q. Do you recall who took your first order for Firestone TBA?

A. On the day that I took over there were many items that I needed. There was no—naturally I had—I am not sure of the date of that Firestone agreement. But I had not made any contacts myself with the Firestone people. And at the time the Atlantic salesman, Mr. Jones, took an order for me and relayed it to Firestone, and I believe later on that day or early the next day a Firestone salesman came out and completed my order.

Q. At that time did Mr. Jones make any remarks to you with respect to TBA?

A. At that time I had no intention of—let's say that I hadn't even made any contacts with any other jobbers, and I was concerned mainly with getting settled and starting in business, and I don't believe the subject came up that first day.

Q. Did it come up shortly thereafter?

1221 A. I would say that it came up within 30 days of that time, yes.

Q. In what way did it come up?

A. Well, I bought some items from jobbers that either Firestone at that time were out of, or that they did not handle, one or the other. Any items that I bought from a jobber that Firestone did not handle, why I was never questioned on. However, any item that I did handle that Firestone handled and distributed themselves, I was told that the company would like me to purchase all of my products from Firestone.

Q. Who made—

A. The company I am referring to is Atlantic.

Q. Who is the Atlantic representative that you are referring to?

A. Mr. Jones.

Q. What type batteries did you handle when you first went into the station?

A. Firestone.

Q. Thereafter did you purchase any other brand of battery?

A. Yes, I did. I purchased some Bowers batteries from a direct salesman.

Q. Direct salesman from the Bowers company?

A. Yes. And I purchased, well, I can't say I purchased them, I ordered some Exide batteries. The jobber's name now slips me. Anyhow, they delivered the batteries 1222 but I actually had not made the purchase because usually when a dealer buys a list of items from a jobber he is billed for them and pays for them at the end of that month. Within that period I was approached by Mr. Jones and told that I should not sell those batteries; they weren't as good as the Firestone batteries; and that he didn't want me to display them in the station.

So I removed the batteries from display in the display room of the station to the back of the lube bay in the station, and the Exide batteries I returned to the jobber. So actually I did not make any purchase of the Exide batteries. I still did keep the Bowers' batteries, and I finally discontinued selling them.

Q. Why did you discontinue selling them?

A. Because I was afraid that if I rubbed Atlantic the wrong way by continuing to sell them, that I may be in their disfavor, and I had been—at the time the discussion came up about the batteries, it was my—I guess it was my first warning that the company expected me to buy

Firestone products and that if I did not buy Firestone products, chances were that my lease would not be renewed.

Q. Did an Atlantic representative ever threaten you with lease termination?

Mr. Ballard: I object to the question, your Honor. That is clearly a leading question.

Hearing Examiner Kolb: I think not. He mentioned the fact that he thought his lease would be terminated.

A. Yes. There are various ways that it happened. It happened at various times. Never really a definite threat, but always a round-about, let's say, threat. It was always that—I was always left with that impression, and there was always that implication, that if I didn't do and operate the way Atlantic wanted me to, I would be—chances are my lease would not be renewed. And when it came to buying items, if I bought items that Firestone sold, if I bought items that Firestone sold but bought them from another jobber, I was always questioned as to why; where did you get these items; why did you buy them from this jobber when you could have bought them from Firestone. Firestone sells them, and Firestone has an agreement with Atlantic; you know that; that was explained to you; and why didn't you buy them from Firestone.

Of course, the reason I would say is that the mark-up that Firestone gave was usually 30-33 percent, and the mark-up that I could get elsewhere would average about 40 percent. And the reason that I didn't buy these products from Firestone was because I could get them elsewhere cheaper.

So then the subject came up about lease renewal, and so I was sort of afraid to buy them again. However, I at various times spoke with the Firestone salesman on the same subject and he assured me that any item that I could

buy elsewhere at a cheaper price, Firestone would
1224 sell them to me at that same price.

And that worked this way: I had to prove to him that I could buy the item at a cheaper price by buying one item from a jobber and showing him a receipt, and then placing an order with Firestone and he would sell them to me at that price. And the next time I placed an order for that same item with Firestone, I got them at the other price again, so I had to go back and do the same thing over again. It just kept getting to a point where I was—I became, well, I felt ill toward the Atlantic Refining Company for doing such a thing and forcing me to do that.

Q. Did Mr. Julian White ever call at your station?

A. Yes, he did.

Q. Do you recall his title?

A. At the time Mr. White I believe was—

Q. Was he Mr. Jones' superior?

A. Yes, he was Mr. Jones' superior. His exact title—

Q. That is all right.

Did he ever make any comments to you about TBA?

A. Yes. In a rather vague way. He never—with regard to TBA items, he never openly singled out an item and compared it with the Firestone item. Well, probably for one reason is there were very few items that I carried that were not Firestone. But as I recall, later on, as the months rolled by, it became more apparent that his intentions were the same.

1225 Q. The same as whose?

A. Mr. Jones. In that they expected me to buy Firestone products.

I can't give you an exact incident where Mr. White himself accused me of not cooperating with the company by buying items from someone else. However, I do believe that that may have happened in the course of the 11 months that I had the station.

Q. Did you purchase accessories from other than Firestone?

A. I did. I purchased—the majority of accessories that I purchased from other than Firestone were accessories that Firestone did not handle. There were times when I purchased items that Firestone did handle from other jobbers, and they were mostly at times when either Firestone couldn't make a quick enough delivery or when Firestone was out of the item.

Q. Would you name some of the other jobbers from whom you purchased accessories?

A. I purchased accessories from Taylor Auto, and Durham Motor and Adams Parts.

Q. Was any comment ever made about your purchase of non-sponsored accessories by Atlantic representatives?

A. Any item that I sold that Firestone did not handle, no statement was made about it.

Q. Was any comment ever made by Mr. Jones about such items?

A. The only comment Mr. Jones ever made about 1226 items of that type were items that I could have bought at Firestone. Any items that I ever bought from any other jobber that Firestone did not handle, I was never—they never came up.

Q. I see. You were only questioned about items that were in the Firestone line?

A. That is correct.

Q. Which you purchased from another jobber?

A. Yes, sir.

Q. And what comment did he make about such items as the latter?

A. Well, generally he would say, "You know that you can get these items at Firestone. Why didn't you buy them from Firestone? You were instructed in the school that Firestone items were sponsored in all the stations, and

the agreement that you have as a Firestone dealers more or less doesn't compel you to buy only from Firestone, but the agreement that you made with them more or less states that on your part you"—meaning my part—that I would buy them. And any item that he saw—I won't say every item that he saw, but most of the items that he noticed that were Firestone items, he would ask me why I didn't buy them from Firestone, and why I bought them from someone else. And then we would get back to what we were discussing earlier, and my same reasoning would come up.

However, after a few times I got to the point where these items I bought almost all Firestone items because I was afraid of this non-lease renewal.

Q. Mr. Sullivan, did you have an outdoor sign at your station?

A. Yes.

Q. What type, what brands of advertising?

A. Are you speaking with regard to tires, batteries and accessories?

A. Tires, batteries, and accessories.

A. There were signs in the window and there was a tire rack outside that had the Firestone sign on it, and there were Firestone signs in the windows, and decals, a trim of decals, Firestone tires, batteries, accessories, all the way around the display room.

Q. Were they placed there at your request?

A. No, they were put in there by—I don't know whether Firestone came out and—you see, the decals that were already in the window were of the same type, and they were old, and they were renewed. They were cleaned off and new ones were put in there, and I don't know whether the Firestone salesman put them in or one of the Atlantic salesmen.

Q. Were you ever visited by an Atlantic phantom customer inspector?

A. Yes.

Q. Were you advised of his coming to the station?

A. No. Of his coming to the station?

1228 Q. Yes.

A. Only that I was advised by letter that the phantom was on his way and he would be around the next, say, couple of weeks, and maybe next month or next month and a half, and to be on the look out for him, make sure you spot the item he needs, et cetera.

1229 Q. What do you mean by "spot the item he needed?"

A. Well, the phantom inspector always had an item missing on his car that was a tire, battery, or accessory item. And as you approached the car and gave the phantom customer service, delivery service, if you did it in the correct fashion you got, I don't know, ten or twenty points, and if you were dressed nice and neat you got another twenty points, and if you spotted the item that he needed on his car that was missing, like—let's say he had a worn fan belt or he needed a quart of oil, or his rearview mirror was missing, or he needed a wiper blade—if you spotted that item you got another ten or fifteen points. And if your displays were neat, and if your restrooms were neat and clean, you were awarded more points and a perfect station I believe got a total of 300 points. And all perfect stations in the area at the end of this inspection period usually were awarded a War Bond or something like that by the Atlantic Refining Company.

Q. Did you attend Atlantic dealer meetings?

A. Yes, I did.

Q. Was a Firestone representative ever present at such meetings?

A. Almost always.

Q. What did the Firestone representative do at such meetings?

A. He would display Firestone products and usually it was previous to a sales promotion deal, and whenever a new line came out of Firestone products. Mainly it was on tires. They would be displayed and their features would be extolled to us so that we could pass them on to the customers.

Q. What was your approximate gallonage when you moved in to the station, Mr. Sullivan?

A. I understand that the dealer from whom I assumed the station was doing about 8,000 gallons a month.

Q. Did you increase that gallonage?

A. Yes, I did.

Q. To about what?

A. To about, I believe, seven months later, my gallonage was 21,500.

Q. You stated that you left the station on or about October 23, 1954?

A. That's right.

Q. Would you give us the reasons for leaving the station at that time?

A. Yes. About a month before that time, maybe a little longer, I was approached by Mr. Jones and Mr. White, and it seemed that there was another dealer in the immediate area, another Atlantic dealer, who was located about maybe five or six blocks from the location that I had, yet on another vein of traffic. However, his residential customers all came from the same growing area that mine did.

1231 The fellow in whose name the station was, is a fellow by the name of Clark—William Clark. I did a market survey for him because he had forgotten how to do the survey, and I found that most of his customers, most of his residential customers, were drawing from the area that my customers came from. And at that time Mr.

Clark was quite concerned about his business because he had not had too much of a control over his credit.

I believe he was something like \$1,000 or 1,100; he had that much money out in credit. That is why I helped him make this survey. And so when we found out that our marketing areas were from almost the same place, shortly thereafter I was approached by Mr. Jones and Mr. White and I was asked to release the option that I had with the S&H Green Stamp Company so that Mr. Clark could handle the S&H Green Stamps.

I felt that this was one of the main reasons why I had increased the gallonage in the station, and that regardless, even though Mr. Clark was a brother Atlantic dealer, I naturally wasn't going to cut my own throat by releasing the option in that area of those stamps to him.

So I was told by Mr. Jones and Mr. White that if I did not, the retail—the tank-wagon price on gasoline would be lowered to Mr. Clark and he would sell his gasoline at a lower price. So I said, "If you do that, you can have the keys to my station."

1232 Sometime thereafter, shortly thereafter, a lady drove into the station and she said, "What is the idea of your selling your gasoline two cents higher than the fellow around the corner?" So I hopped in the truck and went around, and sure enough he was selling his gasoline a penny or two cheaper than I was, and he had a big sign out along the end of the driveway, and it was—and I understand from that dealer that it was painted by personnel of the Atlantic Refining Company, and the sign was an inverted "V" shape type sign and it had a hand on it and a couple of eyes, and it said, "Hey, look, low prices." And attached to the pump was a smaller sign, advertising the price of the gasoline.

So I went back to my station and I called the Atlantic Refining Company office and I told them that I would give

them an hour to come down and take down the signs or pick up my keys. So Mr. Jones and Mr. White came out and they tried to talk me out of doing it. And of course I wouldn't.

So they went around and they removed the signs. Whether they removed the signs themselves, I do not know. However, the next time I went around to Clark's station the signs were taken down off of the end of the driveway, but the sign was still on the pump and the price of the gasoline was still the same.

Whether the Atlantic Refining Company actually reduced the tank-wagon price to Mr. Clark or not, I can't prove.

I don't know.

1233 However, they did induce him to lower his price.

And so I got out my contract, and I agreed—or I believe I got out the contract and read where I had to give 30 days notice or one thing or another. So I typed out a notice to them that I was going to leave the station. I felt that if my own company would cut my throat like that, that I would be better off out of the company.

Q. Did you remain for the 30 days and then leave?

A. Like I say, that day, I don't know exactly which day it was, it may have been longer than 30 days from the day that I left the station. They had a little trouble getting a fellow to take over the station I think, and it was a few days, one way or the other.

Q. Mr. Sullivan, you attended the Atlantic dealer training school in Allentown, Pennsylvania?

A. That's right.

Q. You stated in answering my questions that Firestone representatives were there and discussed TBA. Did Atlantic Refining Company representatives discuss TBA as well?

A. Yes.

Q. Did they refer to any specific brand?

A. Oh, yes. Firestone. They did not stress at the school that we were compelled to buy Firestone products. They did, however, stress that Atlantic more or less expected us to.

Mr. Kelaher: No further questions.

1234 Mr. Mason: I move to strike the testimony of the witness on the ground that it has no connection with any issue in this case relating to respondent Goodyear.

Hearing Examiner Kolb: The testimony of the witness will be received, subject to a motion to strike by Goodyear.

Mr. Ballard: Your Honor, may we have what will be a short recess?

Hearing Examiner Kolb: Yes.

(A recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

Cross-Examination by Mr. Ballard.

Q. Mr. Sullivan, I represent the Atlantic Refining Company in this matter. Mr. Mason here represents Goodyear Tire and Rubber Company.

Going back to the dealer training course for just a moment, there were of course a lot of other things that were covered in that course besides TBA, weren't there?

A. That is correct.

Q. Such things of course as lubrication, brake procedure?

A. Brake procedure? In which way?

Q. I imagine it tells you how to service brakes and things like that.

A. The only thing that I was ever taught about brakes was how to refill a hydraulic brake system.

1235 Q. How to refill it?

A. That's right.

Q. And how to service the electrical system, I suppose?

A. Not complete service of an electrical system. How to replace a bulb; spot a bulb, things like that.

Q. The things that a service man is expected to know more than a repair man?

A. That is correct.

Q. And they also had some courses on business management, didn't they?

A. That is correct.

Q. And they tried to tell you how to promote sales and—

A. That's right.

Q. —things of that nature.

In the course of that they explained this relationship between Atlantic Refining and Firestone, didn't they?

A. Yes.

Q. Told you that Atlantic was trying to sell Firestone merchandise, promote the sale of it?

A. They did not tell me that Atlantic was selling the Firestone merchandise.

Q. What did they tell you?

A. They told me that the Atlantic Refining Company had an agreement with the Firestone Tire and Rubber Company, and they explained the reason for this agreement.

1236 Years ago Atlantic used to have an agreement with the Lee Tire and Rubber Company, and they sold Lee Tires and I believe batteries and accessories. And Atlantic warehoused them and delivered them, and handled them, which cost Atlantic an awful lot of money, so that they came upon this agreement with Firestone whereby they would not have to ship them or handle them or warehouse them or take orders for them or anything. And Firestone, in turn, would give Atlantic a ten percent cut-back on it.

Q. They called it a commission, didn't they?

A. I think so, yes.

Q. You prefer to think of it as a cutback, do you?

A. Well, I just used that. Let's say commission.

Q. And they told you that the Atlantic salesman would be trying to promote the sale of tires, didn't they?

A. No, sir.

Q. They never told you that at all?

A. No. They told me that the Atlantic refining company, due to this agreement, would expect me to buy Firestone products.

Q. Do you think those are about the words they used?

A. I would think that generally those are the words that they used.

Q. Would you remember the names of the personnel at that school by any chance?

1237 A. The director of the school I think was a fellow by the name of Lew Sulyard.

Q. We had that name this morning and we couldn't get it then.

A. How do I spell it?

Q. Yes.

A. S-i-l-l-i-a-r-d.

Q. Silliard?

A. Yes.

Q. He was the director?

A. I believe he scheduled the school and handled most of the instruction. There was one fellow, I understood, who was directly in charge of him, over the whole training, and his name I forgot.

Q. You think that probably the man that told you that you were expected to buy Firestone was Silliard?

A. Not necessarily. Whenever the subjects came up—and they were liable to come up during any period, and Mr. Silliard was not the instructor at any period, because

various Atlantic salesmen and Atlantic representatives of one type or another gave instruction on different items.

And sometimes we would get off tangent to the subject and we would get on to this agreement with Atlantic and Firestone. And it was always put to us in a way that we would not—this is at the school now—that we would
1238 not be forced to buy only Firestone products. But more or less expected us to.

Q. It sort of gave you the idea that other dealers would be buying, is that the idea?

A. Oh, yes.

Q. Sort of that that was the kind of thing that you would be apt to find in an Atlantic station, is that the idea?

A. That is correct.

Q. Didn't they stress the fact that the motorist expects it?

A. No, sir.

Q. Didn't mention that?

A. No, sir.

Mr. Kelaher: Would you read the last question?

(Question read.)

1239 By Mr. Ballard:

Q. When you took over this station you began to build the gasoline volume up pretty fast, didn't you?

A. Well, I think that is a matter of opinion. I think I did.

Q. Didn't Jones think you did?

A. I should think so.

Q. He gave you a pat on the back when you began to get these high volume figures, didn't he?

A. He would say that I was doing pretty good, yes.

Q. And I think you always got pretty—

A. I attribute, like you mentioned earlier, I attribute

a great deal of my success there in raising the gallonage to the school.

Q. You think the school did a good job for you?

A. Certainly, yes. In this way: other oil companies, I think they are all getting around to this school business any how now. However, in the past other oil companies had found that when they had trouble acquiring a new dealer, they would usually take a guy who had enough capital to assume the station and open the door, and there it was, and he had to feel his way around. I think that this school helped me much more than I would have been able to do by myself. In regard to manager and control over the business, inventory, selling, all those.

1240 Q. It was a worthwhile school?

A. I would say that, yes.

Q. Was that by any chance the reason that you chose to be an Atlantic operator, because of that school?

A. Well, I would say that was one reason. Another reason could have been that Atlantic was going to lend me the remainder of what capital that I needed to take over the station.

I won't say that I regarded Atlantic Refining Company as the only and the best oil company, and one that I could sell more products than another company.

Q. Do you think you could have gotten a dealership with another company?

A. If I had had the money I would have taken a dealership with another company.

Q. You would have?

A. Yes.

Q. There were two or three others available that you could have had?

A. I didn't have the money.

Q. If you had had the money you could have?

A. If you had the money now you could take one. There

were that many available. That is my opinion of the thing. Personally, I would have—this doesn't enter into it—I would have taken an Esso station because they sell 1241 more gasoline. That is the thing.

Q. Not that I am interested, you understand—

A. I didn't want to get off on a tangent but I think your questions led that way.

Q. I think your point is well taken.

Tom Jones came around once a week?

A. Sometimes he wouldn't be there for a couple of weeks:

Q. He wouldn't?

A. That is right.

Q. And sometimes he would be there pretty often?

A. I would say so.

Q. You talked about the phantom inspector?

A. Yes.

Q. And a letter that you got saying the phantom is on his way?

A. That is correct.

Q. Who did you get the letter from?

A. From, I believe,—I don't know whether it was the regional office.

Q. Somebody in Atlantic?

A. That is right.

Q. It was almost a little game, wasn't it, to see if you could spot the item that was missing?

A. That is correct.

Q. And did Tom Jones tell you after it was all 1242 over—by the way did you ever spot the item that was missing?

A. I believe the day that he came, I was out to lunch and my number one man was in town picking up some parts, and a fellow who worked part time for me, who—

he relieved me for lunch and he didn't have a uniform on and we got black-balled.

Q. Did Tom Jones give you a hard time about that?

A. No, I think he got a kick out of it.

Q. Was that the only time in the year, just that one time?

A. The only time I recall.

Q. He never gave you a chance to redeem yourself?

A. Although you expect him any day during the whole year. That was the object of the thing, to keep your place so that you would get a score of 300, whenever he walked in, which would have been any time.

Q. You honestly think you could have gotten 300 points any days?

A. Well, Friday night—

Q. Any other day?

A. When I was busy I would say no. Any other time, yes.

Q. As a matter of fact, you never did buy any substantial number of batteries from Firestone, did you? May I refresh your recollection. I think the amount was \$21 worth?

A. \$21 worth?

Q. Yes. In the year. On batteries now, I am speaking of.

1243 I suggest—

Mr. Kelaher: Let the witness answer. I don't mind him asking the question.

The Witness: In the first place are you questioning me or are you stating facts?

By Mr. Ballard:

Q. I suggest to you that that was the amount.

A. I will not say to you that that was the amount. I will say that—it is my opinion that I bought more bat-

teries than that from Firestone. However, when we are talking about batteries we are not talking about a high volume item because the market in service stations for a battery is very low due to competition in the area, mainly Sears and Roebuck.

In order for me to make a reasonable profit on a battery, less the ten percent that Atlantic was taking, I had to sell that battery at list price, and if I didn't, which naturally I was cutting down my profit and you could go to Sears and Roebuck and get a battery, probably not as good a service out of the battery, but at a much cheaper price.

Q. You figure Firestone added that ten percent back on the price, do you?

A. Well, I am not saying that Atlantic included exactly ten percent. I am not saying that I know it to be a 1244 fact that Atlantic got exactly ten percent of everything that I bought from Firestone before the tax was taken out or after tax was taken out. I mean if you want to pinpoint me to the thing you can't because I can't tell you that, because I don't know that to be a fact. However, I do know that the mark-up from Firestone was about ten percent less than the mark-up from any other agency, and I assumed that Atlantic was getting—that that was the reason for it; that Atlantic was getting the difference.

Q. You didn't think Atlantic was doing much to get it, either, do you?

A. No, I didn't.

Q. To get back to the batteries, how many batteries do you think you maybe did buy from Firestone over the year?

A. Like I say, it is not a high volume item. If I were to sell you a Firestone battery, a first class battery—

Q. Weren't you getting—

A. And pay \$26 or \$27 for it, about. The only time you

would buy it from me is when you couldn't go another foot with your car.

Q. Can't you answer my question? How many batteries did you buy from Firestone, about?

A. I will give you an estimate.

Q. Give me your best estimate, please.

A. Probably maybe ten.

1245 Q. How many did you think you got from Bowers in a year?

A. I think I bought six.

And due to the fact that I was asked not to display them, which—I sold six of them, and ordered a couple more. Exactly how many, though, that figure six I am not exactly sure of.

Q. Isn't it a fact that when you decided to leave this station that Tom Jones tried to get you to take one of two other stations?

A. Yes, he wanted me to take a station I believe on Vandever Avenue, and the other station I believe he wanted me to take was 25th and Governor Printz.

Q. Those are both stations closer to your home?

A. Yes.

Q. Tom thought they might be more attractive to you?

A. He thought they would.

Q. He was quite anxious to have you take one of those stations?

A. Yes, he wanted me to take that station, that is correct. I don't think that he was dissatisfied with my ability.

Q. I don't think he was, either.

Mr. Ballard: I don't have any further questions.

Mr. Kelaher: No questions.

Hearing Examiner Kolb: That is all. Thank you.

(Witness excused.)

1246 Hearing Examiner Kolb: We will adjourn until 9 o'clock tomorrow morning.

1248 Hearing Examiner Kolb: The hearing will be in order.

JOHN GALLE was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. John Galle, 30 Miles Road, Claymont, Delaware.

Q. Were you at one time a lessee of an Atlantic service station?

A. Yes, I was.

Q. Where was this station located?

A. Highland Avenue and James Street, Newport, Delaware.

Q. During what period did you operate the station?

A. December 1954 up to about April 1956.

Q. What was the term of your lease?

A. One year.

Q. Prior to that time did you work in an Atlantic service station?

A. Yes. I worked at Stein's Atlantic Service.

Q. Where was that located?

A. Lancaster Avenue.

1249 Q. Norris Stein?

A. Yes.

Q. How long were you employed there?

A. I think about five months. Five or six months. I believe he opened July or August.

Q. And you worked there until you opened your own station?

A. Until I opened my own.

Q. What was your purpose in becoming an employee of Norris Stein?

A. Mainly to learn the business.

Q. Did you know, or did Atlantic know that you wanted to become an Atlantic lessee operator when you began your employment with Mr. Stein?

A. Yes. They understood the situation, that I was interested in taking a station.

Q. That was a preliminary training period in a sense, is that correct?

A. That is right.

Q. You stated that you opened your station in December 1954. Did you invest your own capital in the station?

A. Yes.

Q. Approximately how much?

A. Four thousand dollars.

Q. What TBA did you stock in your station?

A. Mainly Firestone TBA.

1250 Q. And when you began, when you first opened the station, what TBA did you have in there at the time?

A. I bought the TBA that was in the station, except any off-brands that I didn't want.

Q. So you had Firestone? What brand tire did you have?

A. Firestone:

Q. Batteries?

A. Batteries.

Q. And accessories?

A. Purchased from Firestone.

Q. Who was your supply point? Who supplied you with the Firestone products?

A. Firestone, in Wilmington. Firestone stores.

Q. Did you have any difficulty in selling Firestone TBA?

A. Well, actually the TBA itself, excluding tires and batteries, is pretty much a standard price.

Q. Let's take Firestone tires. Did you have difficulty selling Firestone tires?

A. Firestone tires, the difficulty was mainly in price.

Q. In what way?

A. Mainly the situation that existed at the time was the price that we paid, that I paid for the tires was a little bit higher than what I could buy equal brands for at other places; equal brands, same quality.

Q. Did you have any competition in the sale of 1251 Firestone tires? Were there other stores selling Firestone tires?

A. Yes, Firestone store.

Q. Were you able to meet that competition?

A. No.

Q. Were you able to meet Firestone store competition on batteries?

A. No, not when Firestone had a sale. I couldn't compete with them at all unless I tied up a good bit of money in buying their merchandise to sell at their price, and the profit between them wasn't worth it.

Q. Could you have purchased other brands of batteries than Firestone at a better profit margin?

A. Yes.

Q. Were you satisfied, after you had been operating for a little, with Firestone tires and batteries?

A. Not as far as once again price, buying, the price that I had to pay for them, I wasn't satisfied with it. Because you could buy other lines at a cheaper price, which is mainly after all what you are concerned with.

Q. Was there a time when you attempted to buy other brands at cheaper prices?

A. I wouldn't say I attempted to buy cheaper brands. I looked into it rather thoroughly, to see what situation existed in the market, and I found out that I could buy competitive brands at a better price than offered by Firestone.

1252 Q. And does that apply to both tires and batteries?

A. Yes.

Q. Could you designate the brands on which you could get better prices?

A. Well, at one time one of these supply houses—at that time one of the supply houses offered me Auto-Lite battery at a better price. And a salesman from Keil's came around and offered me tires at a better price.

Q. What kind of tires?

A. I think it is Goodyear. I believe it is Goodyear.

Q. Who offered you the better price on Auto-Lite batteries? What jobber?

A. Adams Parts.

Q. Do you recall the name of the salesman?

A. Herb Dashper.

Q. After you made this study of prices did you discuss the matter with an Atlantic representative?

A. Yes, I did.

Q. Who was the Atlantic representative?

A. At that time it was Tom Jones.

Q. Would you state the conversation that you had with Mr. Jones?

A. Well, at that time I took it up with Tom. I thought it might be better as far as I was concerned personally in the business if I could buy cheaper from another
1253 source of supply other than Firestone, and Tom had said that I had signed an agreement to purchase

from—that is, TBA tires and batteries—from Firestone, and that more or less you shouldn't go against the agreement; plus the fact that Atlantic didn't like to see competitive brands to Firestone in the station.

Mr. Ballard: Mr. Kelaher, can we have the date of this conversation?

By Mr. Kelaher:

Q. Can you fix the approximate time?

A. I took the station in '54. I think it was somewhere in '55, and I believe it was either in the spring or in the summer. But I can't pinpoint it any better than that.

Q. Did Mr. Jones make any further statements at that time?

A. Other than they didn't like to see competitive tires and batteries in the station, if I took them in I would probably have a visit from the men above Tom in the Atlantic office.

Q. Who were they?

A. I think that the one was J. White, who was sales manager or sales supervisor, and Dick Zinn, who was district manager.

Q. After your talk with Mr. Jones did you purchase Auto-Lite batteries?

A. No, I didn't go ahead with it at all.

Q. After you talked with Mr. Jones did you purchase Goodyear tires?

A. No.

1254 Q. And thereafter what brand of tires did you purchase?

A. I purchased Firestone tires and batteries.

Q. So during your entire period as a lessee dealer you handled nothing but Firestone tires and batteries?

A. Yes.

Q. What line of accessories did you handle? Who was your principal supplier of accessories?

A. My principal supplier was Firestone.

Q. Mr. Galle, you stated that you were not competitive with Firestone stores as to price, as I understand your testimony?

A. Yes, that is right.

Q. Would you explain that in a little more detail, please?

A. Well, about the easiest way to do that would be that I took the advertising that Atlantic has available for dealers, and in that advertising a lot of it is—wait a minute, wait a minute, excuse me. I am wrong in that.

I bought Atlantic and Firestone, I believe there are two separate packages. And it was in the Firestone advertising where they have the circle to put inside the tire, which advertises the price. I know at that time that Firestone's selling price or sales price, put it that way, the sale that they were having, and they wanted Firestone dealers to join in it. I couldn't—if I made anything, I believe at the time I figured that even buying the tire deal, that I 1255 only cleared on the tire about \$1.

Q. So your cost price was at or about the selling price of the Firestone tire?

A. It was close to it. It wasn't worthwhile for me to tie up money to take a chance on not selling the tires.

Mr. Kelaher: That is all, your Honor.

Hearing Examiner Kolb: You may cross-examine.

Mr. Ballard: May we have a very short recess, your Honor?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Mason: I would like to make a motion on behalf of Goodyear to strike the testimony of the witness since

it has no bearing on any of the issues of this case affecting Goodyear.

Hearing Examiner Kolb: The testimony will be received, subject to a motion to strike by Goodyear.

Cross-Examination by Mr. Ballard.

Q. Mr. Galle, I represent the Atlantic Refining Company, and Mr. Mason, next to me, represents the Goodyear Tire & Rubber Company.

I think you told us that prior to taking over the 1256 station at Highland Avenue and James Street you were employed by Norris Stein for four or five months?

A. Yes.

Q. Prior to that you had been with the Piasecki Helicopter people, is that right?

A. Yes.

Q. And I think you prepared at the Academy of Aeronautics?

A. That is right.

Q. Where is that?

A. At LaGuardia Field, New York.

Q. You are a graduate of that institution?

A. Yes.

Q. Mr. Galle, I show you a document marked Commission Exhibit 319 and ask you whether you recall receiving a copy of that. Would you look at that, please?

A. Yes, I remember receiving a copy of this.

Q. I call your attention to the date on this document, June 22, 1955, and I ask you: That was about the time I believe that you had your discussion with Tom Jones about Goodyear, wasn't it?

A. Somewhere in that time. It could have been before it could have been after. I can't pinpoint that.

Q. Do you recall whether this letter came up in the course of your discussion? Did you discuss that?

A. No, I don't believe that it did. I don't believe 1257 that it did.

Q. Did you ever discuss this letter with Jones?

A. No, I don't think I did. I remember getting the letter, and I had a file on the lower right-hand side, I put it down there, and I took it home. As a matter of fact, I probably still have that letter.

Q. You never reported Jones to Mr. Davis, did you?

A. No.

Q. You never felt that it was necessary to do that?

A. Honestly, no.

Mr. Kelaher: What was the answer?

The Witness: No, I didn't believe that it was necessary to report anything like that to Mr. Jones—to Davis.

By Mr. Ballard:

Q. The Firestone people run three or four tire sales a year, don't they?

A. I believe that is correct.

Q. One of them I think is their Fourth of July sale, isn't it?

A. Yes, I believe one is the Fourth of July and I believe one is Labor Day. They run two big ones.

Q. During those sales they announce a special low price to the customer?

A. That is right.

1258 Q. And that is the price you were speaking about that gives you about a \$1 margin?

A. That is right, somewhere in there.

Q. Isn't it true that then they offer you a \$2 concession on the tires you buy during that sale? Don't they offer you \$2, a \$2 lower price?

A. They offer you a lower price if you buy a certain

number of tires. Not in size. A certain quantity of tires you get a lower price.

Q. Are you sure they don't give you that lower price on every tire during the sale?

A. On every tire, yes, that you buy; but the point that I am driving at is you couldn't get that lower price, as far as I remember, if you were buying one or two tires. I think—

Q. Even though it was a sale?

A. Yes. I believe that you have to buy a certain number, 10, 15, 20, whatever it may be. I think that is what they call their tire deal, on quantity buying of tires.

Q. When you got these Goodyear price lists, you got them for purposes of comparison, didn't you?

A. That is right.

Q. And you and Tom Jones sat down and went over the price list side by side, didn't you?

A. I don't think we went over any prices. We may have. I don't recall it that way. Tom came in and 1259 I—we were both standing there, that I remember, and I brought it up to Tom that I could get a better price from Goodyear by buying—that is, I could get a better price if I bought one tire or if I bought ten tires. That is the point that I am trying to make.

Q. Didn't Tom tell you that if you could make a better deal with Goodyear on a spot job like that to go ahead and do it?

A. I don't recall that. I don't recall that at all.

Q. He knew you had the Goodyear prices, of course?

A. Oh, yes, I told Tom that I had the prices.

Q. And he tried to persuade you that Firestone was a better deal?

A. Yes.

Q. Acted like a salesman, didn't he?

A. Yes, he did; a good salesman.

Q. Mr. Galle, with respect to this contract with Firestone that you mentioned, that was the regular little Firestone franchise agreement?

A. Yes, dealer franchise. That is right.

Q. It wasn't any special contract?

A. Not that I know of, no.

Q. Just a little printed piece of paper, about half a sheet?

A. Yes, I think it looked like a certificate or something.

1260 Q. I think we saw one of those yesterday.

One other question. On these annual sales by Firestone, they are principally tires, aren't they?

A. Yes.

Q. As a matter of fact, I think they don't lower the price on batteries, do they?

A. On the battery situation, you have a price, if you buy one battery, and I bought mainly in ten battery lots because I remember I got a better price. I got them cheaper in groups of ten. I believe that was the number specified.

Q. That price doesn't change during the sale?

A. No.

Q. Are batteries covered by the sale at all?

A. I think every now and then Firestone used to have a battery sale that they would advertise, where they would sell a battery of certain type at a certain price on a sale, and they would have their—they would make it available to the associate dealers to do the same thing: But you had to buy a certain quantity of batteries in order to get a reduced price.

Mr. Ballard: I have no further questions.

Mr. Mason: I have no questions.

Redirect Examination by Mr. Kelaher.

Q. Mr. Galle, you stated on cross-examination that 1201 Firestone runs I believe you said three or four tire sales a year?

A. As I remember it, I think there were somewhere around three or four.

Q. Were those sales at various parts of the season? I think you mentioned the Fourth of July?

A. Yes, I think there are two special ones, I believe; one Labor Day and the other Fourth of July.

Q. Then do they run others during the year?

A. During the course of the year they I believe have other tire deals available.

Q. Are those sales run when the consumer demand is high for tires?

A. Yes, I would say they were.

Q. So that the tire purchasing is seasonal in a sense, is it not?

A. Yes. It is usually seasonal. I would say that it was; mainly in spring and summer.

Q. Did Firestone run these sales at or about the same time each year? Is it a regular thing with Firestone?

A. I believe that it is.

Q. You were also asked on cross-examination about battery sales by Firestone. Based on your purchases, your own purchases, were you able to meet such competition price-wise?

A. Was I able to meet competition?

Q. On the Firestone?

1262 A. On the Firestone battery?

Q. On the Firestone battery deal without buying special large quantities?

A. No.

Q. Was the selling price on the Firestone deal at or about your purchase price on Firestone batteries?

A. What was that again?

Q. Was the Firestone selling price on batteries during these sales, at or about the same price as your cost of the Firestone battery?

A. Well, there was a spread. I don't remember how much. That I don't remember.

Q. Was it narrow?

Mr. Mason: He doesn't remember.

A. (Continuing.) I think that it was. It was pretty narrow at the time that they would have a sale.

Mr. Kelaher: That is all, your Honor.

Mr. Ballard: I have no further questions.

Hearing Examiner Kolb: That is all, Mr. Galle. Thank you very much.

(Witness excused.)

Mr. Dias: Mr. Hawes, please.

1263 HARRY NOBLE HAWES was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your full name and home address?

A. Harry Noble Hawes, 7th Atkins Avenue, Colonial Park, Delaware.

Q. Did you at one time operate an Atlantic station?

A. Yes, I did.

Q. Will you give us the address, please, of that station?

A. The first one was at DuPont Parkway, New Castle,

Delaware, approximately around State Road, not far from it.

Q. Will you tell us when you moved into that station?

A. May of 1945.

Q. 1945?

A. 1954, rather.

Q. Did you attend a training school before you moved into that station?

A. Yes, I did.

Q. The training school was operated by the Atlantic Company, was it?

A. It was.

Q. Can you tell us where that training school was?

A. Well—it was Williamsport, Pennsylvania.

1264 Q. How long was the course?

A. I think it was seven weeks, if I am not mistaken. It used to be five; maybe it was five.

Q. Do you recall when you started your training at that training course?

A. It was the week around the 15th of May. I couldn't tell you the exact day.

Q. Can you describe the training course? Was it all classroom work, was it field work?

A. It was a combination of the two. We went to class. The first two or three days strictly all class. And then we started in with going to class a half day and a half day in the field, and vice versa, we would start in the field and come back to the class. It consisted of a combination of both class and working in the field.

Q. What did the field work consist of?

A. Of changing tires, wheel bearings, lubrications.

Q. Where?

A. In various stations, Atlantic stations in that community.

Q. And what did your classroom work consist of?

A. Different parts of the car, the breakdown of the different oils and its ability to do and carry out, the grade of oils, and gasoline, and the DPA.

Q. What is DPA?

A. That was waiting on customers and so forth, 1265 how to approach people.

Q. Was TBA discussed during the course?

A. Oh, yes.

Q. How often?

A. Quite often.

Q. Was it daily, a couple of times a day?

A. Well, it would come in in the course of a day. It would come in sometimes during the day practically every day, either in the field or sitting in the office.

Q. Who discussed TBA?

A. I am not too much on names.

Q. Was it an Atlantic representative or a rubber company representative?

A. We had a combination. We had Atlantic and Firestone.

Q. What in particular was said about TBA, do you recall?

A. Well, I think it was a breakdown, the tire company, for instance, where they would tell you the grade of tire they had, how it was made; why it was a better tire.

Q. Which tire were they talking about?

A. Firestone. That is all we ever heard in there, Firestone.

Q. Did anyone tell you that you were supposed to handle Firestone when you were in your station?

A. Well, that is a question I wouldn't like to say that it was put to me that I had to. But it was more or less I think understood. For instance, when I was called 1266 back to Wilmington to buy all my accessories and so forth, it was a Firestone dealer who was there.

There was nobody else there. It was a man that I was expected to buy from.

Q. Did you, before you signed up, have any particular preference for Firestone?

A. What was that again?

Q. Did you have a particular preference for Firestone?

A. No.

Q. Would you tell us the name of your Atlantic instructor during the time of your schooling?

A. We had several different ones. Could I be refreshed on any of them?

Q. Yes. May I suggest the name of Souilliard?

A. Souilliard was one.

Q. I wonder if we may let the record show that it is spelled S-o-u-i-l-l-i-a-r-d. The first witness yesterday, Mr. Stein, couldn't take a guess at it. The second witness estimated it was S-i-l-l-i-a-r-d. I believe this is the correct spelling now.

Q. When you finished your schooling, Mr. Hawes, you mentioned awhile ago that you went into Wilmington to close out the deal for your station, is that correct?

A. Well, I hadn't finished my schooling when I was notified that I was expected back in Wilmington to get my accessories and things.

1267 Q. And at that time did you sign your leases and finish your negotiations?

A. I am not too sure just when they were signed.

Q. Did you at that time place an order for TBA?

A. I did.

Q. And I believe you stated that it was with Firestone?

A. That is right.

Q. Who was your Firestone supply point?

A. Well, the man that I signed up with was named Hill.

Q. Hill?

A. Yes. A salesman for Firestone.

Q. Did they supply out of the Firestone stores or is there an independent supply point, do you know?

A. No, they come from the stores.

Q. Did you invest any money in the business? Did you have to lay out any cash?

A. Yes, approximately \$2500 to \$3000. I just don't remember the figure.

Q. Do you know how much of that was spent on TBA?

A. \$2500 to \$3000.

Q. That was TBA alone?

A. Yes.

Q. Did you buy tires?

A. I did.

Q. Batteries?

1268 A. I did.

Q. And accessories?

A. I did.

Q. How long did you operate in that station, Mr. Hawes?

A. From May until January, the following year.

Q. While you were in that first station did you buy any TBA other than Firestone TBA?

A. Not that I recall.

Q. In January you left that station. Did you go to another station?

A. Fortieth and Washington; Atlantic station.

Q. Did you execute another lease at that time, or was it just an extension of your first one?

A. No, I executed another lease.

Q. This second station at 40th and Washington, was that a brand new station?

A. No, it wasn't.

Q. Did you buy any products from the old operator when you moved in?

A. A few; not too many.

Q. What products did you buy, do you recall?

A. I bought a few tubes, a few tires, mostly oil, gasoline, and a few of the—just odds and ends, because he took most of it with him.

Q. What tubes and tires did you buy? What brand?

1269 A. They were all Firestone.

Q. Did you have any TBA equipment left at your first station?

A. Yes, I did.

Q. Did you take that with you?

A. I did.

Q. After you moved into the second station, did you buy any TBA products other than Firestone?

A. Yes, I did.

Q. Can you tell us when and what brands?

A. Well, various times. I bought Lee. I was offered what I thought was a better deal, certainly, in buying smaller amounts anyway. I could buy one tire, two tires or three. I felt that I could get them at a little better deal than I could with Firestone.

Q. What in particular did you buy in the Lee line?

A. Tires and some batteries, tubes.

Q. Do you recall the name of the jobber that you purchased those from?

A. Not right off-hand. I probably can think of it before I leave here.

Q. How about accessories? Did you buy any accessories other than Firestone accessories?

A. No.

Q. You did not?

1270 A. No. Not that I recall of. It is possible. On account of there is another station involved, and I did buy a few.

Q. What hours did you keep in the first station, Mr. Hawes?

A. Twenty-four hours.

Q. And in your second station what hours did you keep?

A. Seven to eleven, except on Sundays, and I closed at 10:00 P. M.

Q. On that 24-hour stint in your first station, did Atlantic specify that?

A. No, I did myself.

Q. You did yourself?

A. Yes.

Q. And in the second station?

A. They specified from seven to eleven.

Q. Did they specify these hours before you moved in?

A. Yes, they did.

Mr. Thompson: May we have who "they" are?

Mr. Dias: When I say "they" I am referring to Atlantic.

The Witness: That is right.

Mr. Thompson: May we have a definition of "they"?

Mr. Dias: I assume it is in the lease.

1271 By Mr. Dias:

Q. When Atlantic specified hours in the second station, was it an individual representing Atlantic, or was there a specification in the lease? Do you recall?

A. It was in the lease as well. It was in both. It was specified by the individual, and also in the lease.

Q. Do you recall who the individual was?

A. Well, there were four or five involved. When you transact a deal there, there is more than one involved. There is usually two or three.

Q. Can you just name one? I think that will be satisfactory.

A. I guess Mr. White, at that time. He was involved.

Q. Mr. White?

A. Yes.

Q. After you purchased the Lee Tires and Tubes and Batteries, did you stock them in your station?

A. Yes, I did.

Q. And what occurred, if anything, after that?

A. Well, I was asked at one time what they were doing there.

Q. Who asked you that?

A. I had about three salesmen there, and I wouldn't want to say which one it was. There were three different salesmen that were working there at the time. It could have been one of the three.

Q. Who did these salesmen represent?

1272 A. Firestone.

Q. Firestone?

A. Yes. What we call salesmen.

Q. Did an Atlantic salesman ever make any comment about those tires and batteries?

A. Yes, they did. Wanted to know what they were doing there.

Q. Do you recall who that gentleman was?

A. Well, he has since quit his job as salesman, one way or another anyway, and he is now an operator, at 30th and Market Streets.

Q. And you don't recall his name or you do recall it?

A. No, I don't, right now.

Q. He is currently an operator at 30th and where?

A. 30th and Market.

Q. Do you recall approximately when it was that he asked you that question?

A. I would say the spring of 1954. 1955, rather.

Q. The spring of 1955 when that occurred?

A. Yes.

Q. Was there anything further said? Did you continue to carry Lee Tires, Tubes, and Batteries?

A. Yes, I did.

Q. Was anything further said to you about those?

A. Well, not exactly. But coming close to the end of my contract I wanted to know whether to put an ad 1273 in the telephone book about the station or not, and

I called up and wanted to know if I was going to get my lease renewed. I heard that I weren't, indirectly. I didn't get a definite answer, other than, "Go ahead and put the ad in," because the man can use it anyway if I didn't stay there.

By Mr. Dias:

Q. What type ad was that that you wanted to place, Mr. Hawes?

A. An ad in the business part of the telephone.

Q. Listing your station?

A. Yes. Advertising.

Q. Did you intend to advertise products, too?

A. Not necessarily. More or less, "Atlantic Service Station, Pick Up and Delivery."

Q. Did you obtain another station sometime during 1955?

A. Yes, I did. On the First of September.

Q. Where was that station?

A. Concord Pike. Tallyville, I think they call it. It is right at the Concord Diner, right across the street—1274 diagonal across, 45 degrees.

Q. Did you check out of the second station, the one at 40th and Washington?

A. No, I didn't. I operated the two of them.

Q. Concurrently?

A. At the same time.

Q. This third station, in Concord, did you buy that station outright, or did you lease it from Atlantic?

A. I leased it from Atlantic.

Q. You leased it from Atlantic?

A. Yes, I did. All I bought was gasoline and oil, nothing else.

Q. You handled no TBA products in the third station?

A. Yes, I did.

Q. What?

A. Mostly Lee Tires and Tubes, batteries, and some accessories from Firestone. Whatever I felt I wanted, I bought. I bought it very independently.

Q. Was any comment made about those Lee Tires, Tubes, and Batteries in that third station?

A. Not too much. Only when I got ready to move out, to sell it.

Q. Do you recall the amount of your rent in that third station?

A. They more or less guaranteed me so many 1275 gallons, and if I didn't sell them they made up the difference.

Q. By "they" you mean who?

A. Atlantic Refining. Like they would guarantee me, say, just to use an example, 800 gallons.

Mr. Thompson: May we have an identification of "they?"

The Witness: Or 8000 gallons a month. And if I didn't sell that much they would pay me the difference.

By Mr. Dias:

Q. By "they" do you mean Atlantic?

A. Yes.

Mr. Thompson: May we have an identification of "they?"

The Witness: "They?"

Mr. Thompson: Atlantic can't talk.

By Mr. Dias:

Q. Who specifically in Atlantic?

A. That was in the contract, also. I would say Mr. White, and two or three others.

Q. Did you eventually leave your second station at 40th and Washington?

A. Yes, I did.

Q. And will you state when you left, and the reason for leaving?

A. I left the second of January. I believe that 1276 is the right date. 1956.

Q. Did you leave that station of your own accord?

A. I didn't particularly want to leave. I more or less understood that Atlantic had another dealer for it.

Q. Did Atlantic renew your lease?

A. No, they didn't.

Q. Did they notify you that they were cancelling your lease?

A. I don't recall ever getting it, only by mouth.

Q. Do you know who it was that told you orally?

A. This gentleman sitting back there. I can't think of his name right now.

Mr. Arnaud: Arnaud, A-r-n-a-u-d.

By Mr. Dias:

Q. Can you tell me approximately when Mr. Arnaud notified you that your lease would not be renewed?

Mr. Thompson: I object to the question as a distortion of what the witness has testified to, Mr. Dias. He didn't say that.

Mr. Diaz: I must have misunderstood.

Hearing Examiner Kolb: He testified that they refused to renew his lease.

Mr. Thompson: No, sir. He said he didn't particularly want to leave. I made a note of it when he said it.

Mr. Dias: I think you will find that he followed 1277 that up that he received oral notification from Mr. Arnaud.

Mr. Thompson: Can we clarify it by asking him?

By Mr. Dias:

Q. Mr. Hawes, can you tell us what Mr. Arnaud told you at that time?

A. He said they weren't satisfied with the amount of gasoline I was selling there, and they had another dealer for the station. And they felt that when I bought the other station that I was going—that it was understood, more or less, that I was going to go in business there, or at least train my son for—they wanted me to train my son to take over and take the other business.

Q. The third station you are referring to?

A. Yes. I had had a heart attack in all this time, you see, but I had taken the station after the heart attack. They knew I had the heart attack and yet they let me have the station at Concord Pike.

Q. Do you recall when it was that Mr. Arnaud gave you that information?

A. It was in December 1954.

Q. Early or latter part?

A. Or 1955, rather.

Q. Do you recall if it was the early or latter part?

A. I asked two or three times. I asked one time down at the main building, and there was nothing definite 1278 answered. And I knew my 30 days—that I was supposed to get it 30 days before, some kind of notification, and I hadn't gotten it yet and I was just wondering if I was going to get some kind of a notice, and I didn't get anything, other than it was just more or less—well,

they could have notified me in 30 days I guess, any time they wanted to. I didn't have any new lease, anyway.

Q. When you went into your third station, you executed a lease on that third station, did you?

A. Yes, I did.

Q. And for what term?

A. It was more or less for a year.

Q. For a year?

A. Where I could get out if I wanted to, and so forth. I didn't have no trouble getting out. They got another dealer for me when I asked to get out.

Q. When you closed the second station, when you moved out of the second station, did you have any TBA left on hand?

A. Not too much. I had taken it with me. I had it, but I had taken it.

Q. To the third station?

A. To the third station.

Q. Did you have anything to sell, to dispose of, when you left the second station?

A. Most of all my equipment.

1279 Q. I see.

A. Approximately all of it. I had a fair deal on that.

Q. After you moved into the third station, was there and condition in your lease relative to your hours in the third station?

Mr. Thompson: If your Honor please, the lease will speak for itself. If the staff hasn't got a copy, I will be glad to supply one.

Mr. Dias: I wish you would. Mr. Hawes was unable to supply one. If you have all these leases I would be glad to put them in.

The Witness: I wouldn't know anyway, because I didn't keep open those hours.

Mr. Thompson: Shall we pass this? If you want the lease I will provide them later.

Off the record?

Hearing Examiner Kolb: Off the record,
(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Dias:

Q. How long did you stay in your third station, Mr. Hawes?

A. Until June.

Q. Of what year?

A. 1956.

Q. If I understand it correctly, you went into that 1280 third station in September of 1955 and terminated in June of 1956?

A. Yes.

Q. Was the lease terminated at your request or Atlantic's request?

A. At my request.

Q. At your own request?

A. Yes.

Q. When you left that third station did you have any TBA on hand?

A. I did.

Q. Can you tell us what TBA you had on hand? What brand tires for example?

A. I had quite a few tires and tubes.

Q. What brand?

A. Lee.

Q. Did you have any Firestone?

A. No, I didn't.

Q. How about batteries?

A. I had I think four or five. I don't just recall.

Q. Do you recall what brand?

A. Lee.

Q. And just accessories in general, what type did you have in the station?

A. I had a very small coverage, but I had belts and spark plugs and polishes and so forth.

1281 Q. Did the new dealer come into that station when you left it, the third station?

A. Yes, he did.

Q. Did he buy your Lee Tires, Tubes, and Batteries?

A. No, he didn't.

Q. Did you attempt to sell them to him?

A. Yes, I did.

Q. Did he refuse?

A. Here again, he didn't refuse, so much.

Q. Who did?

A. The same friend over there, sitting. They wouldn't be bought. I can't recall his name.

Q. Mr. Arnaud?

A. Mr. Arnaud.

Mr. Thompson: The same friend said what?

The Witness: That the dealer was not buying those tires. He answered for him.

By Mr. Dias:

Q. During all the time of your association with Atlantic in various stations, were there any station operator meetings of any type?

A. Meetings for Atlantic?

Q. For station operators, Atlantic station operators.

A. Oh, yes.

Q. Did you attend any?

1282 A. Quite a few of them.

Q. Were those meetings sponsored by Atlantic?

A. Some of them were.

Q. What, in general, was discussed at those meetings, do you recall?

A. TBA, gasoline—gasoline, rather, the two gasolines.

Q. Two gasolines?

A. Well, their regular and premium. Plus Firestone Tires. Mostly tires.

Q. Was there ever a Firestone salesman present at those meetings?

A. Oh, yes.

Q. Can you tell us how often those meetings were held?

A. Well, I would judge around three or four times a year.

Q. Did you have credit card or credit check privileges at any or all of those stations?

A. What do you mean by "all those stations?"

Q. You had three stations. You were in three stations.

A. Oh, yes. My credit was good. I didn't have any credit card.

Q. I don't mean your credit. I mean these national credit cards—the president's credit card, or credit checks, as Atlantic calls them.

A. Oh, yes, I used them. I honored them.

Q. Was that an important sales factor in your business?

1283 A. Well, I don't know that it was. I honored them and they in return honored them also, the credits, and paid me back in cash.

Q. I don't think you understood my question primarily. Did you do much business by credit?

A. A good bit of it. A right good bit.

Q. Can you give us some idea of the amount of your business that was done on those credit cards?

A. On the highway I would say roughly around 30 to 35 percent. At 40th and Washington it was about 15 to 20 percent, credit cards.

Q. And the third station?

A. And on the third station it was around 35 to 40 per cent again. Quite a few "pay" customers.

Mr. Dias: That is all, your Honor.

Hearing Examiner Kolb: Cross-examination?

Mr. Thompson: May we have the customary five minutes?

Hearing Examiner Kolb: We will have a short recess.

(A recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Mason: I move to strike the testimony of the last witness as having no connection with Goodyear.

Hearing Examiner Kolb: The testimony of the witness will be received, subject to a motion to strike by Goodyear.

1284

Cross-Examination by Mr. Thompson.

Q. Sir, I might identify myself as counsel in this proceeding for the Atlantic Refining Company.

At your Tallyville station, when you were handling Lee Tires exclusively, did you have them on consignment or did you buy them from the distributor? Do you remember?

A. Well, I had—I bought them on a ninety-day—they give me ninety days to pay for them.

Q. Lee took them back, didn't they?

A. Yes, they did.

Q. Were you selling Lee Tires to holders of Atlantic credit cards?

A. Atlantic credit cards?

Q. Yes. Holders of Atlantic Refining Company credit cards. When you sold Lee Tires, you of course permitted those customers to charge them, didn't you?

A. No, I never sold one.

Q. Never sold Lee Tires?

A. Never sold a Lee Tire on an Atlantic credit card.

Q. Really?

A. Yes.

Q. How about Lee Batteries?

A. Never sold one the whole time I was at the Concord station.

1285 Q. You sold all your Lees for cash?

A. Absolutely cash.

Mr. Thompson: That is all.

Hearing Examiner Kolb: No further questions?

That is all, Mr. Hawes. Thank you.

(Witness excused.)

1286 Hearing Examiner Kolb: The hearing will come to order.

RICHARD BROWN was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address.

A. Richard Brown, 221 Duncan Road, Wilmington, Delaware.

Q. Were you at one time an Atlantic lessee dealer?

A. Yes.

Q. During what period were you an Atlantic lessee dealer?

A. October 1955 to April 1957.

Q. Where was your station located?

A. 2530 Concord Pike.

Q. You stated that you were an operator from October 1955 until April of this year, is that correct?

A. Yes.

Q. Did you invest any of your own capital in the station?

A. Yes.

Q. How much?

A. About a thousand dollars.

Q. Did you receive a loan from Atlantic?

A. Yes.

1287 Q. In cash or stock?

A. In stock.

Q. Did it include TBA products?

A. Yes.

Q. What brand of products?

A. Firestone.

Q. Do you know approximately what the value of the Firestone TBA was?

A. About \$600.

Q. How was your station identified as to TBA?

A. Had a Firestone emblem on top.

Q. Did you have an outdoor Firestone sign, too?

A. No.

Q. How long was your lease, for what term?

A. It was from October to September, and then they renewed it and I had it suspended—cancelled.

Q. When you went in the station you stated that you had a stock of Firestone tires.

A. Yes.

Q. Firestone TBA?

A. Yes.

Q. With respect to the Firestone tires, were you satisfied with the Firestone tires?

A. No.

Q. Why not?

1288 A. Because you could buy other brands of tires cheaper.

Q. Did you receive any competition in the sale of Firestone tires?

A. From the Firestone stores.

Q. Was that competition difficult to meet?

A. Yes.

Q. Do you recall any specific loss of business?

A. Well, there were several customers I lost because I couldn't meet competition.

Q. Were they customers who came in to your station?

A. Yes.

Q. Did they price the Firestone tires there?

A. Yes.

Q. Where did they eventually purchase the tires?

A. At the Firestone store.

Q. How was the delivery service from the Firestone store?

A. Very poor.

Q. Will you explain that.

A. You would call up for something and you would never know when you would get it. That was about the size of it. You could get it from another jobber immediately.

Q. Did you become dissatisfied with Firestone tires?

A. As far as the price differential, yes.

Q. Did you begin to purchase another brand of tires?

A. Yes.

1289 Q. What brand?

A. Goodrich.

Q. From whom did you purchase the Goodrich tires?

A. From Allen Tire Company.

Q. When did you commence to buy Goodrich tires, approximately?

A. I think maybe it was around February—it was in February 1956.

Q. With respect to your accessory purchases, when you

first went into the station you stated that you had a stock of Firestone accessory line, is that correct?

A. Yes.

Q. Did you become dissatisfied with the Firestone accessory line?

A. Not—

Mr. Ballard: Your Honor, may I object to the form of these repeated questions? He is leading the witness. I know he is doing it in the interest of saving time.

Hearing Examiner Kolb: I don't think it is anything that involves anything in particular. He isn't telling him what to say. I will overrule the objection.

By Mr. Kelaher:

Q. You may answer.

A. Well, the only way that I was dissatisfied was through the kind of service that I got from Firestone.

1290 Q. You are referring to delivery service?

A. Yes.

Q. Did you commence to purchase accessories from local jobbers?

A. Yes.

Q. Would you name some of the jobbers from whom you purchased?

A. Taylor Auto, Suburban, and Duromotive.

Q. Do you know the full name of Suburban?

A. Suburban Auto.

Q. Is it located in Wilmington?

A. In Hollyoak. Philadelphia Pike.

Q. And Taylor Auto Supply?

A. Yes. That is in Wilmington.

Q. And Duromotive?

A. In Wilmington.

Q. Did you have an Atlantic salesman by the name of Robert Klein call on you?

A. Yes.

Q. Were any comments ever made by Mr. Klein with respect to non-sponsored TBA that you purchased?

A. Yes. He said that he didn't like it, that it affected his salary.

Q. ~~He~~ said it affected his salary?

A. Yes.

1291 Q. Do you recall the approximate time of the conversation?

A. I think it was about May 1955.

Q. Do you mean 1956?

A. Yes, 1956.

Q. Do you recall his language, substantially?

A. He just—they told me only that I was cutting their throats, cutting their salary by not buying from Firestone.

Q. Did anyone in addition to salesman Klein from Atlantic make such comments?

A. Mr. Jones made one time, or several times, and Mr. Connolly made it once.

Q. Mr. Connolly?

A. Yes.

Q. Did you attempt to sell Goodrich tires under the Atlantic credit card system?

A. Yes.

Q. Did you have any incidents with respect to that situation?

A. When the customer got dissatisfied over the adjustment of a tire, he didn't pay his bill, so then they told me that I wasn't supposed to sell other products on the credit card, other than Firestone.

Mr. Ballard: Can we have that identified?

Mr. Kelaher: Yes.

1292 By Mr. Kelaher:

Q. Would you give us the name of the salesman who said that to you?

A. Mr. Klein.

Q. Can you give us the approximate date?

A. In May—I mean December, 1956.

By Mr. Kelaher:

Q. You left the station in April 1957. Will you give us the circumstances leading up to your leaving the station?

A. Mr. Jones came in one night and we were standing there talking, and he just up and told me that he had somebody else for the station, if I wanted to get out that they would put him in it. So I thought it over. It made we kind of mad. I wasn't mad to start with. I thought that was a heck of a thing for a man in his position to be saying, that I had never said anything about it. The next day I just called the salesman and told him if he felt that way that I was getting out.

Q. What salesman was that?

A. I told Mr. Klein the next day.

Q. Mr. Klein, the next day?

1293 A. Yes. Then he come back and told me later that he was kidding.

Q. Who came back?

A. Mr. Jones. And I told him I never liked that kind of kidding.

By Mr. Kelaher:

Q. Was any reason ever given for your leaving the station?

A. No.

Q. I would like to have you tell us something about what transpired when you actually left the station. Did you check out, as they call it, in the presence of other gentlemen?

A. Yes.

Q. Was anyone from Atlantic there?

A. Yes, there were two representatives from Atlantic there.

Q. Who were they?

A. Mr. Klein and Mr. Hayman.

Q. Was the incoming dealer present?

1294 A. Yes.

Q. Do you recall his name?

A. Burton—B-u-r-t-o-n.

Q. Did you attempt to sell your stock and equipment to Mr. Burton?

A. I did.

Q. Did you sell it to Mr. Burton?

A. There was a lot of it that wasn't sold to him.

Q. What was the reason for that?

A. Well, a lot of it, they influenced him not to buy.

Q. Who were they?

A. Klein and Hayman.

Q. Influenced the new dealer not to buy?

A. Yes.

Q. Did that include TBA items?

A. Yes.

Q. Were such TBA items purchased from other than Firestone stores?

A. Yes.

Q. So you were left I take it with a certain amount of TBA stock on hand?

A. Yes.

Q. What disposition did you make of that?

A. I practically had to give it away in order to get the guy to buy the tools and stuff.

1295 Q. You gave that to the incoming dealer?

A. No. I gave it to another man. I sold my tools. I practically gave it to him. The same thing.

Q. Getting back Mr. Brown to that credit card incident, what brand of tire was that that you sold?

A. Goodrich.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: You may cross-examine.

Mr. Mason: Before cross-examination begins, I would like to move to strike on behalf of Goodyear on the grounds that the testimony has no connection with the respondent Goodyear.

Hearing Examiner Kolb: The testimony of the witness will be received, subject to a motion to strike by Goodyear.

Cross-Examination by Mr. Ballard.

Q. Mr. Brown, I represent the Atlantic Refining Company. This area here represents Goodyear. When you checked out of the service station at Concord Pike; 2530 Concord Pike wasn't it?

A. Yes.

Q. You had pretty complicated credit dealings with Atlantic Refining Company, didn't you?

A. It would depend upon what you call complicated.

1296 Q. You owed them some money and they owed you some money, is that right?

A. That is right.

Q. They granted you credit for quite a lot of equipment and inventory, didn't they?

A. They gave me credit?

Q. Yes. They gave you credit for the inventory and equipment that they bought, isn't that right?

A. Yes.

Q. And included in that were some Goodyear tubes, isn't that right?

A. Yes, I believe there were.

Q. Four Goodyear tubes.

A. Yes.

Q. Of course you didn't buy those from Firestone.

A. No.

Q. There were also some Champion spark plugs, weren't there?

A. Yes.

Q. Did you buy those from Firestone?

A. No. I didn't buy them from Firestone. I bought them from Atlantic.

Q. You bought them from Atlantic?

A. Yes.

Q. When did you buy them from Atlantic?

1297 A. When I went in the station.

Q. They had been there all that time?

A. Yes.

Q. Then there were some autostat parts, weren't there—thermostats?

A. Yes. They were in there, too.

Q. Where did you buy those?

A. From Atlantic.

Q. You bought them when you came, too. So they had to take them back?

A. They didn't have to. They didn't take a lot of the other stuff.

Q. How about Bardahl? Was that in there when you took the station over?

A. It seems to me that the guy had a rack there, but I don't think there was any Bardahl in when I bought the station.

Q. Where did you buy the Bardahl?

A. From the Bardahl man.

Q. And Atlantic took that over when you left?

A. Yes.

Mr. Kelaher: I would like the record to show that Bardahl is not a TBA item.

Mr. Ballard: Mr. Kelaher, I can't stipulate that with you. I will stipulate it is not covered by the sales 1298 commission plan.

Mr. Kelaher: I don't think it requires a stipulation.

Mr. Ballard: Whatever you want. It is a TBA item.

Mr. Kelaher: Bardahl? An oil?

Mr. Ballard: It is an additive. I think those are considered.

By Mr. Ballard:

Q. Mr. Brown, the incident that you told us about, that tire, I think you said it was a Goodrich tire?

A. Yes.

Q. Was that the tire that you sold to a Mr. H. A. White?

A. Yes.

Q. And Mr. White complained, did he not, that he had a flat tire very shortly after that?

A. Yes.

Q. In fact he had two of them.

A. I believe that is what he told the salesman. I only know that he had one.

Q. He told him that the flats resulted from pinching the tube in the tire casing?

A. Yes.

Q. Were you the fellow who put that tire on?

A. Yes.

1299 Q. What did you finally do about that?

A. I had the tire adjusted. It wasn't caused by that. It was caused by hitting a hole in the road and breaking the casing, which in turn pinched the tube.

Q. Did the Goodrich people allow an adjustment on that?

A. They did allow me an adjustment.

Q. Did Mr. White finally pay for it, the rest of it?

A. Yes. He had a run-in with Atlantic and me. He kept fooling around and fooling around and wouldn't pay for the tire. But finally he came down and did pay for it.

Q. Who did you buy that tire from?

A. Allen Tire Company.

Q. Actually you sold quite a lot of different kinds of tires from your station, didn't you at one time or another?

A. Yes.

Q. You sold Fisk at one time?

A. Mostly all of it we bought from Allen.

Q. Mostly Goodrich?

A. They sold Fisk and they sold some Firestone and they sold Goodrich.

Q. Did they sell U. S. Rubber?

A. No.

Q. They didn't sell U. S.?

A. I think they did sell U. S., but I never bought any. Put it that way. They handled U. S.

1300 Q. Did they handle General?

A. No they didn't handle General.

Q. Did you ever sell any General?

A. No. I sold some of their recaps. I never sold their new tires.

Q. Did you get that recapping from Allen, too?

A. Yes.

Q. You continued to charge sales of these different tires on the Atlantic credit slips, didn't you?

A. Yes.

Q. You never got into any other difficulties with Atlantic about it, did you?

A. No. That was the only one:

Q. Just that one with Mr. White?

A. Yes.

Q. Of course, when you sold accessories you charged them on the credit cards, didn't you?

A. Yes.

Q. And that would include the accessories that you bought from Taylor?

A. Yes.

Q. And Suburban, and Duromotive?

A. Yes.

Q. Is that one word?

A. Yes, Duromotive.

1301 Q. Did Firestone store put you on a COD basis?

A. Yes.

Q. And I imagined Taylor extended you credit, did they?

A. They extended some credit. I paid for most of it in cash.

1302 Q. How much was the total amount you owed Atlantic when you went into the station?

A. As I remember it was about \$2,200.

Q. Actually you operated on a consignment basis the whole time you were there, didn't you?

A. No.

Q. You didn't?

A. No.

Q. You were on a consignment basis in the beginning?

A. Yes.

Q. Do you remember when you got off consignment?

A. About a year later.

Q. Then did you go back on consignment later on?

A. No.

Q. What they called a "contract sales plan?"

A. They brought that into effect when they had a price war, February or March.

Q. Actually you were under-capitalized at this station, isn't that a fact?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Objection overruled.

The Witness: I don't think so.

By Mr. Ballard:

Q. Didn't you have a good deal of credit difficulty all the way through the operation of this station?

1303 A. Yes. I think there are very few that don't.

Q. That could be.

A. Actually they do.

Q. You had trouble with the Freihofer Bread Company?

A. Yes.

Q. They had a judgment against you, I think, didn't they?

A. Yes.

Mr. Kelaher: Objection: What relevancy does the Freihofer Baking Company have to this?

Hearing Examiner Kolb: Was this man running a restaurant there?

Mr. Ballard: No, your Honor. I will ask the witness.

Hearing Examiner Kolb: I don't think bread would be a TBA item.

Mr. Kelaher: No. I think that is very unfair cross-examination.

By Mr. Ballard:

Q. Didn't the Freihofer people serve a notice of an attachment on Atlantic for that judgment?

A. I believe they said they did. I didn't get no money back from Atlantic.

Q. No, I guess not. Then you had trouble with your electric bill, didn't you, and light bill?

A. Yes.

Mr. Kelaher: Objection.

1304 Hearing Examiner Kolb: Objection overruled.

By Mr. Ballard:

Q. Atlantic helped you straighten that matter out?

A. Yes.

Q. They lent you \$200?

A. Yes, and got it right back.

Could I ask one question? Where did Atlantic get their authority for collecting electric bills?

Q. For collecting electric bills?

A. Yes.

Q. I guess you will have to go around and see the Atlantic Refinery Company about it.

A. I have asked but I have never found an answer.

Mr. Ballard: I have no further questions.

Hearing Examiner Kolb: Do you have any further questions?

Mr. Kelaher: Yes, I have a couple.

Redirect Examination by Mr. Kelaher.

Q. Just so the record is clear, I don't understand this, but I made reference before to a Bardahl product. I understand counsel for respondent stated that that would be an accessory item. Was Mr. H. A. White, who bought the Goodrich Tire from you, a good customer of yours?

A. Very good.

1305 Q. Was he a good gasoline customer?

A. Very good.

Q. Was he a good credit risk?

A. Yes.

Q. You were asked on cross-examination about being put on a COD basis by Firestone stores. Did you ever have any arguments with the Firestone store over the prices charged by them?

A. On numerous occasions, yes.

Q. What would that arise from?

A. They would quote you one price and when you got the price it would be another price.

Q. They would quote you one price?

A. Yes.

Q. And you would be billed another price?

A. Yes.

Q. And then an argument would ensue, is that correct?

A. Yes.

Q. Were you able to build up your gasoline gallonage as an operator?

A. Yes.

Q. Would you state approximately what you started at?

A. Well, the first month I had it it was approximately 8,000 gallons.

Q. How did you—

A. It went as high as 15,000. But I averaged over ten.

1306 Q. And your station was a good clean station, would you say?

A. Yes.

Q. You never received any warning letters about your housekeeping, did you, from Atlantic?

A. No.

Q. Or anything of that type?

A. No.

1307 Q. You were asked on cross-examination about some credit difficulties in connection with the Freihofer Baking Company. What was that about?

A. Well, when I went with Freihofer's I had a franchise with them.

Q. You meant you were a dealer for Freihofer?

A. I was a dealer for them.

Q. It had nothing to do with your Atlantic dealership?

A. It had nothing to do with my Atlantic dealership whatever.

Q. How did Atlantic enter into the picture in connection with this Freihofer Baking incident?

A. They kept "horning" me and horning me and finally told me that they would sell the equipment and the stock in the station for the balance of what I owed them.

Q. Who kept after you?

A. Freihofer Baking Company, including the sheriff. So somehow or other they were out one morning and I told them Atlantic owned everything that was in there, that they had an attachment on it, so then they went down to see Atlantic, and that was it.

Q. At this point do you owe Atlantic any money or does Atlantic owe you any money?

A. Atlantic still owes me some but they are holding it, I guess. I don't know what for.

1308 Q. What do they owe you for?

A. They owe me for the TBA and the equipment in the station.

Q. Would you explain that in a little more detail?

A. I have never got paid from the stuff that I sold to the other guy.

Q. You have never been paid for the TBA you sold incoming dealer, is that correct?

A. No.

Q. And you left the station when?

A. In April.

Q. April 1957?

A. Yes.

Q. How much is involved?

A. Well, it is around about way—it involves around \$900. But they claim \$400 already, and another \$400 is in rent, as soon as I get my statement.

Q. How much is owing to you at this point?

A. About \$900.

Q. Was any indication given to you when you will get the \$900?

A. They wrote letters to my creditors that I have already been paid, but then I got a notice from them that this guy from Freihofer's has a judgment with them for them not to pay me.

1309 Q. So you never got the \$900?

A. I never got the \$900.

Mr. Kelaher: No further questions.

Recross Examination by Mr. Ballard.

Q. Mr. Brown, as far as you know, you are still under attachment for the Freihofer debt, is that right?

A. I don't know whether I am or not, to tell you the truth.

Q. What about the amount you owed the Wilco people?

A. I don't owe Wilco anything.

Q. You did owe them at one time?

A. I did at one time but I paid them.

Q. You paid that off?

A. Yes.

Q. That was for purchases of Fisk tires?

A. No, sir.

Q. What was that for?

A. That was for the purchase of TBA, no Fisk tires.

Q. What kind of tires?

A. No tires.

Q. What kind of batteries?

A. No kind of batteries.

Q. Just accessories?

A. Just accessories.

1310 Q. Was it about \$320?

A. \$350, I think, after the magistrate got hold of it.

Mr. Ballard: I have no further questions.

Hearing Examiner Kolb: Are there any further questions?

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Thank you, Mr. Brown.

(Witness excused.)

Hearing Examiner Kolb: We will recess until 2:00 o'clock.

(Thereupon, at 11:55 o'clock a. m., the hearing was recessed, to reconvene at 2:00 o'clock p. m., this same date.)

1311

Afternoon Session.

(1:55 P. M.)

Hearing Examiner Kolb: The hearing will come to order.

HERBERT L. DASHPER was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Herbert L. Dashper, 125 River View Drive, Collins Park, New Castle, Delaware.

Q. What is your present employment?

A. Salesman, Adams Parts Company.

Q. What is the address of Adams Parts?

A. 1601 Northeast Boulevard, sometimes known as Governor Printz. They use both addresses—Wilmington.

Q. How long have you been with the Adams Parts Company?

A. About nine years.

Q. What is your capacity with them?

A. Salesman.

Q. How long have you been a salesman?

A. The full nine years.

Q. What is your marketing area?

1312 A. I go into Elkton, Maryland, Newark, Claymont, Wilmington, Delaware City.

Q. Are there Atlantic service stations in your marketing area?

A. Yes.

Q. Approximately how many?

A. About 25.

Q. Of this number how many do you solicit?

A. Eight regularly.

Q. How often do you call on the eight?

A. Once a week.

Q. Do you recall at one time calling on John Galle—G-a-l-l-e—whose station was located at Highland Avenue, Newport, Delaware?

A. Yes.

Q. Did you solicit battery business from Mr. Galle?

A. Yes, I did.

Q. Were you successful in selling him batteries?

A. No, I never sold him any.

Q. Do you recall any reason he may have given, and if so would you please state the approximate time and the details of the conversation?

Mr. Ballard: Your Honor, I object to this line of questioning on the ground that Mr. Galle was here this morn-

ing. Mr. Kelaher, if he had wished to ask him about 1313 his state of mind at any particular time could have done so. It is not necessary to ask this witness about Mr. Galle's state of mind. The best evidence was here this morning.

Hearing Examiner Kolb: The objection will be overruled.

A. Well, at the time, roughly the summer of '55, as near as I can remember, we tentatively agreed that he would buy batteries. I talked to him one week, and he said the next week I will buy some.

By Mr. Kelaher:

Q. What brand?

A. Auto-Lite batteries. When I called back the next week he said that he had talked to somebody in Atlantic, I don't know who, and they told him he should stick with Firestone and he wouldn't buy them. I never did sell him.

Q. Did you at one time call on an Atlantic lessee dealer by the name of Edgar Cornman, New Castle Avenue and Lamlican Lane, Grosshill, New Castle, Delaware?

A. Yes.

Q. During what period did you call on Mr. Cornman?

A. From about the end of 1949 until roughly in '55, whenever he left the station. I don't know what the date was.

Q. Did you solicit battery and accessory business from Mr. Cornman?

A. Yes.

1314 Q. Were you successful in selling him batteries and accessories?

A. Yes.

Q. What type battery did you sell him?

A. Auto-Lite.

Q. Did he purchase on a stocking basis?

A. Yes.

Q. He purchased Auto-Lite batteries?

A. Yes.

Q. Did he purchase any accessories on a stocking basis from you?

A. Yes, he did.

Q. Could you give us an idea of which ones?

A. Oil filters, spark plugs, various chemicals.

Q. What brand oil filters were you selling him at that time?

A. At one time it was Fram, and later it was AC. I can't recall when it changed.

Q. Do you recall what brand spark plugs?

A. AC. The very beginning it might have been Auto-Lite. We had the two different brands and I couldn't be sure.

Q. And the chemical line, do you recall the brand?

A. There were various brands. We had Hollingshead line for awhile, and Prestone chemical line.

Q. Hollingshead is the Whiz line?

A. That is right.

1315 Q. Did you ever have any conversations with Mr. Cornman with respect to his purchase of TBA from you?

A. Yes, at various times he mentioned that an Atlantic dealer should buy more Firestone and less outside TBA lines.

Q. Do you recall when those conversations were held?

A. No. It would be at various times. I wouldn't have any idea as to the exact time.

Q. It was over the years?

A. Over a period of time that I called on him.

Mr. Ballard: I move to strike on the grounds the conversations have not been properly identified in time.

Hearing Examiner Kolb: Will you fix the time?

By Mr. Kelaher:

Q. Mr. Dashper, did these conversations take place after Mr. Cornman's—after the switchover to Firestone TBA?

A. Yes.

Q. Do you recall the approximate time when that occurred?

A. It would be hard to try to nail it down. There were different occasions. I wouldn't want to try to nail it down.

Q. What identifications—

Mr. Ballard: I renew my motion to strike. This witness has testified over a six-year period.

Hearing Examiner Kolb: Couldn't you make it more definite, what year, when?

The Witness: It would probably be between the 1316 beginning of 1954 and '55. That is as close as I can get.

Mr. Kelaher: Thank you.

Mr. Ballard: We renew the motion, your Honor.

Hearing Examiner Kolb: Are you moving again now?

Mr. Ballard: Yes.

Hearing Examiner Kolb: Denied.

By Mr. Kelaher:

Q. Did you sell hard parts to Mr. Cornman?

A. Yes.

Q. And referring back to Mr. Galle, did you sell hard parts to Mr. Galle?

A. Yes.

By Mr. Kelaher:

Q. Did he make any further statements to you?

A. He said it was he thought because he didn't cooperate more with the Firestone salesman.

1317 . Q. You state that you solicited eight Atlantic stations at the present time.

A. Yes.

Q. Do you recall what TBA identification those stations have?

A. As far as I know, every one has a Firestone decal in the window.

Q. And that advertises Firestone tires, batteries and accessories?

A. Yes, as far as I know.

Q. At the present time I believe you are selling Delco batteries, are you not?

A. That is right.

Q. Do you sell any of these Atlantic stations Delco batteries on a regular stocking basis?

A. No.

Q. Do you sell hard parts to these eight Atlantic stations?

A. Yes.

Q. Do you sell accessories to these Atlantic stations on a regular stocking basis?

A. Some, not much, but some.

Q. When you say "some," about how many? Would you explain that in more detail?

A. Well, I had one that stocks fan belts and hose for me, another one that stocks these oil filters. I would
1318 say they were the only two on a regular stocking basis.

Q. What brand of fanbelt and hose do you carry?

A. Goodyear.

Q. What brand of oil filters do you carry?

A. AC.

Q. Is the AC brand also carried by the Firestone people?

A. Yes.

Q. Have you asked Atlantic dealers from time to time to put up advertising signs of the products you sell?

A. Yes, we ask all of our customers to display advertising.

Q. What success do you have with that?

A. Very little.

Q. Do they refuse to put up the signs?

A. Some refuse, some say "Leave the advertising, I will put it up." But it doesn't seem to get up.

Q. Are you referring to battery and accessory signs?

A. Whatever the particular material happened to be that we sell them.

Mr. Kelaher: No further questions.

Cross-Examination.

Mr. Mason: I move to strike the testimony of the witness as having no connection with any issue relating to the respondent Goodyear.

Hearing Examiner Kolb: The testimony of the witness will be received, subject to a motion to strike by 1319 Goodyear.

By Mr. Ballard:

Q. Mr. Dashper, I represent the Atlantic Refining Company in this matter. I think you said that you had eight regular Atlantic stations, operators, customers?

A. Yes.

Q. Regular customers?

A. Yes.

Q. Could you give us the names of those eight?

A. Van Schaik Atlantic; Pete's Atlantic. Do you want the trade name?

Q. I think we had him the other day. Mr. Adams told us about him. He is Petro Contompasis?

A. That is right.

Mr. Kelaher: May we have the towns where the stations are located?

By Mr. Ballard:

Q. Can you give us Van Schaik's address?

A. Claymont.

Q. Philadelphia Pike and Seminole Avenue?

A. Yes.

Q. Claymont?

A. Yes.

Q. Do you want to try to spell Petro's?

A. P-e-t-r-o C-o-n-t-o-m-p-a-s-i-s.

1320 Q. He is in Hillcrest?

A. That is right.

Jacobs Atlantic, on Vandever Avenue; McGinnis Garage, at McDonough, Delaware, Route 13; Baird Atlantic, Route 13, Farnhurst; Bell, Inc., Market Street, 13th and Market; Atlantic Station at Annaline Village—but for the life of me I can't think of the name—Smith's Atlantic.

Q. Sylvester Smith?

A. Yes.

Lupes (?) Atlantic, Lancaster Avenue. I don't know the address.

Q. That is eight. Do you have any more?

A. That is it.

Q. Taking Pete's Atlantic, how often do you call on Pete?

A. Once a week.

Q. You are pretty much familiar with what he has in his station?

A. Fairly so.

Q. Do you know what suppliers he deals with?

A. No, I couldn't say where his merchandise comes from, other than what I supply him.

Q. Do you know what brand of tires he carries?

A. No, I wouldn't want to testify on that.

Q. As a matter of fact, he carries quite a lot of Lee tires?

A. I don't know, honestly.

1321 Q. You have never seen them?

A. I don't pay that much attention. We don't sell tires and I don't check each one that closely.

Q. Do you know what kind of batteries he carries?

A. I believe he has Firestone batteries. I have seen Exide there in the past. I think he distributes tires.

Q. How long ago do you suppose the Exide was there?

A. Probably a year, maybe somewhere in there, maybe later.

Q. You don't call on John Bruton, on Concord Pike?

A. No, sir.

Q. Are you the salesman who calls on Nicholas DeLeo?

A. No. We don't—I called on him just two or three times. We don't actively solicit his business. He buys from our store, I understand. But so far as I know, nobody calls on him.

Q. You wouldn't know what kind of TBA he carries?

A. No, sir.

Q. Do you call on Nicholas Tavani?

A. No, sir. There is another salesman from our house calls on him.

Q. Who would that be?

A. Marion Adams.

Q. We haven't met Marion. You don't know what kind of TBA—

A. I am not familiar with the station at all.

1322 Q. Do you call on William Whitman?

A. No.

Q. Nor William White?

A. No.

Q. Did you ever call on those?

A. When Whitman first went into his station I called a few times. White I never did.

Q. Why don't you call on Mr. White?

Mr. Kelaher: Objection. He stated he doesn't call on him.

Mr. Ballard: I can certainly ask why he doesn't call on him.

Hearing Examiner Kolb: Objection overruled.

A. For the reason that there are hundreds of accounts around, and we just try to pick the accounts that we can reach. So I have never called on him.

By Br. Ballard:

Q. This fellow Sylvester Smith, do you sell him all his accessories? You don't?

A. No; very few of his accessories.

Q. He carries I think Gates fanbelts largely?

A. Yes, he does.

Q. Do you know where he gets those?

A. No, I don't.

Q. And Walker filters?

1323 A. I believe so.

Q. I think he has a sign and a rack.

A. He has a rack. I don't know about a sign. I know he has the rack.

Q. Where would he buy the Walker filters?

A. I presume Taylor Auto, but I don't know for sure.

Q. Baird I think you said was one of your regular customers?

A. Yes.

Q. That is in Farnhurst.

He doesn't buy all of his accessories from you either?

A. I think the only thing that you could classify as accessories would be his fanbelts and hose.

Q. He also buys Gates fanbelts, doesn't he?

A. I have never seen one in there.

Q. Does he handle Champion plugs?

A. I think he has both Champion and AC, from my observation.

Q. Do you know where he would get those Champion plugs?

A. I think there would be two or three outlets in Wilmington. I wouldn't know which one.

Q. Firestone doesn't have one?

A. Not to my knowledge.

Q. What about filters? What brand of filters does he carry?

A. I think he has Walker filters but I am not positive.

Q. I think also in Farnhurst is Syntzyszyn's Atlantic?

1324 A. I am not familiar with that.

Q. He has an unpronounceable name—
S-y-n-c-z-y-s-z-y-n.

A. I am not familiar with that.

Q. How many accounts do you have all together, Mr. Dashper, personally?

A. About 95.

Q. How many of them do you call on on a weekly basis?

A. About 80 of them weekly.

Q. The bulk of those are garages, I assume?

A. Garages, service stations, car dealers, mostly.

Q. I imagine with 80 regular customers you are a pretty busy man, aren't you?

A. Well, some of those you spend very little time with. If you understand the story, some may be next door to a good customer and you just drop in to see if you could pick something up from him.

Q. You classify them as regular—

A. Because you are stopping in, rather than by the amount of business you get from him.

Q. Put it this way: If you had more time you could call on more people, more customers?

A. That is always true.

Q. There are more available customers around to call on?

A. Yes.

Mr. Ballard: I have no further questions.

1325 Mr. Mason: No questions.

Redirect Examination by Mr. Kelaher.

Q. Do you know which of your accounts are so-called lease dealers and which are contract dealers? Your Atlantic accounts?

A. I believe so. I think there are two, I believe, who are not lease dealers.

Q. Who would they be?

A. McGinnis Garage, I am quite sure he owns his own place; and Smith's Atlantic, I believe—I am not positive of that—I believe he leases from an individual.

Q. And McGinnis' Garage—

A. He is a garage-service station combination, more or less.

Q. What do you sell him?

A. Mostly hard parts.

Q. With respect to Van Schaik, what TBA products do you sell to that Atlantic dealer?

A. Speaking as a stocking?

Q. Yes, regular stocking.

A. The oil filter is the only one I sell him on a stocking basis; TBA.

Q. Do you sell him hard parts?

A. Yes.

Q. What TBA identification does he have in his station?

1326 A. Firestone.

Q. And Petro's Atlantic, what item do you sell him?

A. Ignition, brakes, and then various parts for minor repairs which he might do.

Q. Apparently you have reference to hard parts?

A. That is right.

Q. Hard parts only.

A. Hard parts only.

Q. What TBA identification does he have in his station?

A. To my knowledge, Firestone in the window.

Q. With reference to Jacobs Atlantic, what items do you sell to Jacobs Atlantic?

A. Strictly hard parts to Jacobs.

Q. What identification does Jacobs Atlantic have?

A. Firestone.

Q. With respect to Bell, Inc., what items do you sell to that account?

A. They would be more in the nature of, aside from polishes and waxing, more in the nature of janitor's supplies, tools, floor compounds. It is mostly a parking lot with very little active service station work, but it is Atlantic.

Q. So you sell no hard parts?

A. They don't use hard parts there.

Q. Now the battery and accessory line, what do you sell?

A. To my knowledge they are not selling any
1327 there. They don't handle them.

Q. With respect to Lupes—L-u-p-e-s—what items do you sell to that Atlantic dealer?

A. He is a new dealer. He probably has been there a

month. I have only sold him hard parts in that length of time.

Q. How soon did you call on that account after he opened for business?

A. I think he was there a week, roughly a week.

Q. Did you notice what TBA items were in the station?

A. Well, he—do you mean as far as brands?

Q. Yes. Which brand of TBA was he carrying?

A. Firestone oil filters and fanbelts. He had DuPont radiator chemicals and polishes. Probably other assorted chemicals that I didn't take that much notice to.

Q. What brand of battery?

A. Firestone batteries.

Q. What brand of tires?

A. I didn't notice on the tires.

Q. Do you recall what identification he has on the station?

A. He has a Firestone decal in the window.

Q. How did you learn that that station was opening up—Lupe's Station?

A. Well, I was familiar with his brother, and he told me that he was going to take it over.

Q. You received no word from Atlantic, did you, 1328 that the station was opening up?

A. Oh, no, no.

Q. I think the only one we haven't covered is Baird's Atlantic. I think you testified as to that dealer earlier, if I am not mistaken.

A. I did.

Q. What identification does that station carry?

A. To my knowledge it is Firestone.

Q. And you do sell—do you sell batteries to the station?

A. No, in the accessory line it is fanbelts and hose.

Q. That is Goodyear?

A. That is Goodyear.

Recross Examination by Mr. Ballard.

Q. Mr. Dashper, when you say "to my knowledge" do you mean that you know that to be a fact, or as far as you know that is a fact?

A. You are getting a little technical. I would say that from my observation every Atlantic station that I go into has a Firestone sign on the window, if that is what you are referring to.

Q. That is it.

A. I think that is where I view it mostly. I wouldn't want to specifically say one station has it and it may 1329 have something else. But to my knowledge, at least

I feel sure that everyone has it. I would say 95 percent have Firestone on the window.

Q. So that you are testifying that in general Atlantic stations have Firestone on them?

A. Yes.

Q. But on any particular Atlantic station you could be wrong?

A. Certainly.

Mr. Ballard: No further questions.

Mr. Mason: No questions.

Hearing Examiner Kolb: Thank you, Mr. Dashper.
(Witness excused.)

Mr. Kelaheer: May we have a recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

JAMES PARAG was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

1330 A. James Parag, 113 Landers Lane, Swanwyck Gardens, New Castle.

Q. Were you at one time an Atlantic lessee dealer?

A. Yes, sir.

Q. Where was your station located?

A. 505 South Market Street.

Q. Wilmington, Delaware?

A. Yes, sir.

Q. When did you begin operating the station?

A. August 1, 1955, I think is the exact date.

Q. When did you leave the station?

A. It was sometime in March of 1956. I am not sure exactly of the right date.

Q. Were you on a one-year lease?

A. Yes, sir.

Q. Did you invest capital in the business?

A. Yes, sir; invested \$4500 all told.

Q. Did you receive a loan from Atlantic?

A. No, sir.

Q. Did they promise to loan you money?

A. Yes, sir. They promised to loan me money so that I could operate. I was told I would get money from Atlantic so I could operate to keep up the small credits on their credit cards.

Q. But you never received the money?

1331 A. No, sir.

Q. Do you know approximately how much they promised to loan you?

A. Oh, roughly \$2,000 to \$2,500. In between there I asked for.

Mr. Thompson: May we have identification as to that? Atlantic is a pretty big company.

By Mr. Kelaher:

Q. Who was your conversation with respect to the loan about?

A. Tom Jones. He seemed to be the boss over all the stations, more or less the man—

Q. He was the man with whom you discussed the—

A. That is right. He was the man I signed the lease with and did all the communications with.

Q. When you first opened your station, what brand of TBA did you carry?

A. Firestone.

Q. And who was your supply point?

A. Firestone here in Wilmington. I think it is 11th and West; 10th and West. Anyway, it is close.

Q. Were you satisfied with the service you received from Firestone?

A. No, sir, I was not.

Q. Why not?

A. Well, to start with, one week I would be on credit, next week I would be on cash, and I would be delivered on credit and have to pay cash, and whenever

1332 I paid cash sometimes they would rebill me on it, and sometimes you have to send checks in, not realizing that I had paid it once. My wife made out most of the checks. And we finally caught up with it and we told them about it, and we would get straightened out for a couple of days and the same thing would happen all over again. Then they wouldn't deliver like they promised. Half the time you wouldn't get it for three months and then you wouldn't have the stock in stock. So that is why I didn't like the service.

Q. Was there a time when you began to purchase other brands of TBA?

A. Yes, sir.

Q. Approximately when was that?

A. Roughly speaking, about December.

Q. December?

A. 1955.

Q. And what brand of tires did you begin to purchase?

A. Goodyear.

Q. What brand of batteries?

A. Goodyear.

Q. Who was the supplier?

A. Keil's Motor Company here in Wilmington.

Q. Where is it located?

A. Eleventh and West.

1333 Q. Did you begin to purchase accessories from other than the Firestone stores at that time?

A. Yes, sir; I did.

Q. Who did you purchase such accessories from?

A. Wilco Supply, Motor Car Service, Taylor Auto, there were a couple of other odd jobbers but I can't remember right offhand who they were.

Q. Were you extended credit by those jobbers?

A. Yes, sir; plenty of credit.

Q. Was there ever any question about your credit?

A. No, sir, there was not; never.

Q. After you began to purchase the Goodyear tires and batteries and the non-sponsored accessories, was anything said by an Atlantic representative?

A. Well; they came down one day, saw—

Q. Would you please identify the gentlemen as you go along and the approximate time?

A. All right, sir.

Mr. Tom Jones came down and saw all these batteries and accessories stocked up and on the shelves. He told

me I couldn't handle them. I said, "Why can't I? According to you, when I first went in here, I was allowed to handle anything." I said, "Firestone can't get me what I want. My people want it. When a man has a dead battery he doesn't want to wait three months for a new 1334 battery to come in. And when it comes to adjustment they want adjustment right away." I said, "Keil Motor Company is very good at it, so I am dealing with them. They don't take ten minutes to give me a new battery whenever it is dead. Why shouldn't I deal with them?" That was it.

Q. Did he say—did any of the Atlantic representatives comment upon your purchase of non-sponsored accessories? By non-sponsored I mean purchases of accessories from other than Firestone stores?

A. Yes, there was. There was other things, a few things that Firestone sold, but I did not purchase from them. And then they knew that I didn't purchase from them because they didn't get their commission on it. It wasn't turned in to Atlantic. That is how they found out. So then things got a little hotter and hotter as it went along, because I dealt with the people that gave me the service I needed.

Q. When you say they got hotter and hotter are you referring to any specific Atlantic representative?

A. Yes, sir. Mr. Jones. He kept right up with it.

Q. Would you mind reciting some of the other statements by Mr. Jones?

A. Well, he told me that if I didn't handle according to what Atlantic handled, he said I would lose my lease, which I knew from before that that I wouldn't stay in there longer than August anyway because it started from 1335 the time I went to school. I was supposed to be going to the Atlantic school.

Q. Mr. Parag—

Mr. Mason: Let him finish his testimony. I am interested in what he was saying. He hadn't finished his answer. He was going to say about what started since he went to school. He is answering your last question and you interrupted his answer.

By Mr. Kelaher:

Q. Have you finished answering my question?

A. Yes, sir.

Q. Now let me ask you about the school business that you began to speak about. Please describe what happened with respect to that.

A. When I first took the station, there was nothing told me about I had to go to school. And he told me, he said my service station would be used for schooling.

Q. By "he" you are referring to Mr. Jones again?

A. Yes, Mr. Jones.

Q. Please try to give us the approximate date of the conversation.

A. That was about two weeks before I took over the service station, because he came back to see me at my home. He explained to me that my station would be used for schooling purposes, and I would get paid for the use of the station. So, that seemed satisfactory to me.
1336 And after I took over the service station he asked me would I like to go to school. I said, "I imagine I would. Maybe I can learn something."

So then he went on and I tried to go to school for a couple of days, and the windup was that I was going to somebody else's service station for schooling. I said, "I would like to go to my own service station because I can learn more, and I can watch my business."

He said, "No, you cannot go to your own service station because you will not get the proper schooling." So I told him, "In that case, I will have to stay with my business."

and I can't go to school." He said, "Then you will lose your lease because we will not have non-Atlantic trained service station operators."

Well, that upset me naturally, because I had all this money tied up. I didn't know what to do with all the equipment. So I tried it a couple of more days. It just didn't work out because I had to be at my business, and I told him, "I have to manage my business." He said, "We will put a man in there for you. You will pay him to run your business." I said, "What will happen if I lose my money?" He said, "Well, that would be your tough luck." I said, "In other words, I am going to lose my money no matter how I look at it, because at the end

of the year I won't get my money out of the equipment, and if I put a man there he is losing my money and I am going to lose it anyhow, so I think I will stay here and watch me lose it, because I am not going to make anything here anyhow, because I can't get along with this." Well then, well, I don't know—

Q. Then—

Mr. Mason: Let him finish his answer.

Mr. Kelaher: I think he finished.

Mr. Mason: No, he said "Well then." Let him finish his answer.

Mr. Kelaher: You will have ample time—

Mr. Mason: I want him to respond to your question completely.

By Mr. Kelaher:

Q. Go right ahead.

A. That pretty well concludes the story part of it.

Q. I beg your pardon?

A. That pretty well concludes the schooling part of it because then I dropped it off altogether because I just wouldn't go to school and let somebody else run my busi-

ness. I never did business that way before, where somebody has to tell me how to run my business. And I didn't need it because I felt this way, because if I thought I was incapable of getting in that service station, I wouldn't take it. I had been in my own business all my life and never needed directions of anybody telling me how to run 1338 my business and I didn't feel I needed it then. If

I thought for one minute that I needed schooling, or something like that, I would have been more than glad to go.

So that is it.

Mr. Kelaher: Does counsel feel the answer has been concluded?

Mr. Mason: It sounds like it was concluded.

By Mr. Kelaher:

Q. You stated that you purchased accessories from jobbers other than Firestone?

A. Yes, sir.

Q. Were any statements made with respect to those accessories by an Atlantic representative?

A. Yes, sir. He said if I didn't—

Q. Who is "he"?

A. Mr. Jones said that if I didn't buy strictly Atlantic products, that I would strictly lose my lease because he gets his commission according to what I buy.

Q. When you say "Atlantic products" are you referring to Firestone TBA products?

A. They consider that Atlantic products.

Mr. Thompson: After all, Mr. Kelaher, we have had this too often. Really let this witness answer and not lead him, please.

Mr. Kelaher: He seems to be doing a good job.

1339 Mr. Mason: You are leading him very well,

By Mr. Kelaher:

Q. Now if we can get back to where we were, would you go right ahead?

Mr. Mason: With what?

Mr. Kelaher: That is what I would like to know.

Mr. Mason: Let's have the question read.

Hearing Examiner Kolb: Was that a remark to Mr. Kelaher or a motion to the Hearing Examiner?

Mr. Mason: I would like to have the question read to know whether or not to object to it.

Mr. Kelaher: Your Honor, I think instead of comments between counsel the questions or remonstrances should be directed to you, or oral statements.

Hearing Examiner Kolb: Read the question.

(Question read.)

By Mr. Kelaher:

Q. Did a gasoline price war develop in your area while you were an operator?

A. Yes, sir.

Q. About what time did that develop?

A. The gas war itself was already on when I went in. They had I think the service station—no, I wasn't either. The service station was not on commission. I mean a gal-lonage commission. They had me on strictly rent, 1340 a cent and a half rent, or base rent. That wasn't too bad when I went in. Then, about a month afterward, the tank wagon went up a half cent. So naturally I cut my profit on the gasoline.

I went back and explained to them, about the prices going up. I said, "We would like to have our prices increased." They said, "We will increase, because there are other companies fighting among themselves to try to get it up." They said, "It will go up in less than two weeks."

Q. By "they"—who is "they"? Atlantic salesmen?

A. Yes, sir.

Q. Jones or who?

A. I seem to be referring to Tom Jones as "they" at all times, it seems to me, because when—I always considered Tom Jones a part of the representatives of Atlantic, and whatever he said should be a word of honor. I mean there should be a word that should be carried out by their company. Otherwise, they should not have such a man in there. That is the way I look at it.

Q. Now go right ahead.

A. I spoke to Mr. Jones—I will try to use his name as much as possible—about the prices. I said, "It is going to cut my profit in the gasoline again." I said, "We have to have a better margin." He said, "In less than two weeks it should be up."

Two weeks went by, a month went by and we still 1341 didn't have no increase. Actually, there was no gas war between private owners. It was a gas war between companies, and the poor man is getting the licking down there. I was a private operator down there, and before me was Esso, Sunoco, and Save-Way. Those were all company-operated. When they put the tank wagon price up on me that cut my profit and yet the company wouldn't put their prices up so I could meet competition with them. They kept their prices down.

In other words, I was taking the licking where the company was making big profit.

1342 Q. Did you receive any communication from Mr. Jones or Atlantic with respect to your gasoline price at that time?

A. Yes. It was a little bit later, about three months later after the prices were not changed. No, it was not three months, it was in January sometime. I received a registered letter from Atlantic, saying that they were trying to break up the gas war in the area. We all felt pretty

happy about it because we thought it was going to be ending.

Mr. Thompson: Excuse me. Do we have a copy of that letter, Mr. Kelaher?

Mr. Kelaher: - I haven't it.

The Witness: No, sir, I do not have it because I figured all service stations must have got the same copy, because otherwise Mr. Jones would not have come down the next morning and told me to put up my prices a half cent. He said, "within two weeks put it up another half cent and keep it there." So I said to him, "That is going to mean a droppage of gallonage." He said, "Don't worry about the droppage of gallonage, we will take care of you on that, because your rent will have to drop then." I said, "My rent will drop below my marking, below the standard that I am supposed to pay." He said, "Don't worry about that, Atlantic is prepared to take care of it." Well, me thinking he was supposed to be a qualified representa-

tive, I went along with him, and put it up another 1343 penny. People drew off at a half cent. People used to buy 18 or 20 gallons, and they would say, "That is ten cents more, I will go next door, it is just as good a gas, so why should I buy yours." What could I do about it? The gallonage dropped and two weeks later it went up another half cent. People who bought it at a half cent drove off, they just wouldn't buy. So the only thing helped me open was what little commercials I was able to hold.

Then later on, when I sold out, any way, I found out that they did not make adjustment toward my rent on what they promised, what I was promised. They deducted that from the money that I was supposed to receive.

Q. Approximately how much of a drop did you have in gallonage as result of those price increases?

A. Roughly speaking, 50 percent. 50 percent droppage.

Q. What was your gallorage before, approximately, and after?

A. It was anywhere from 20,000 to 25,000 a month, and it dropped down less than 12,000 I am pretty sure. Of course, I can't use the exact figures because after all, I have been out over a year and I haven't thought of it any more. The further I get away from it the better I will feel.

Q. When did you first know that your lease was not going to be renewed?

A. Oh, from the time that I refused finishing school for them.

1344 Q. Thereafter—

A. They just kept agitating and reminding me that I would not get a new lease and it would be proper for me to get out while getting would be good. I said, "Sure, I will get out, find me a man to buy the stuff. But I can't put it in my backyard, because I am restricted against such things. And if I took it home, it won't be worth two cents to me."

Q. Did you own the equipment in the station?

A. Well, I should say pretty much 100 percent, but maybe I should say 98 percent of it, because part of that stuff Atlantic did own. That is proper.

Q. What type of equipment did you own?

A. Everything that was movable, I owned.

Q. Would that include such items as guns?

A. Yes, sir.

Q. Grease guns?

A. Yes, sir.

1345 By Mr. Kelaher:

Q. Mr. Parag, you testified that you left the station in March, 1956. Is that correct?

A. Yes, sir.

Q. Would you state the circumstances leading up to that termination?

A. Yes, sir. In January, a fellow was supposed to come down to buy the service station at the price that we were going to agree on. So he told me I would have to sign a mutual release. I told him all right, I would sign it, because the fellow I talked to seemed real nice about it, he wanted to buy, so in the meantime the fellow backed out. That left an undated release for the service station, undated release. And then the same fellow finally came back who I bought out, he wanted the service station back again. Then—I want to try to get as close as I can to be accurate—then the fellow come back, he wanted the 1346 service station back again, and Mr. Jones told me that he had a buyer for it—all this time I wasn't knowing who the buyer was. I found out later who the buyer was. And a couple of weeks rolled by. I thought to myself, this is mighty suspicious, he has a buyer for it and the man not coming around to see me, to see if I really want to sell or what is going on. So after awhile they come around and I found out more, and I was talking to Mr. Jones about it some more, and I found out that they just wanted to buy the products that Firestone sold, and what Atlantic sold and then they were going to pile all my stuff in one pile and I was supposed to get together with the fellow who was buying me out. I thought to myself, this is very fishy and doesn't sound right to me. A fellow buying out like that.

Then he said, "You know we have a release signed by you. We can put you out anyhow." I said, "You can, huh!" That is when I got my attorney and we worked on it. And that is when we had to go according to standards. They finally bought out everything that went along, because that is what my attorney told them.

Q. Approximately how much did you lose during your service station operation?

A. I would say anywhere from \$4,000 to \$5,000.

Q. I may have asked you this. What TBA identification did you have in your station? What signs?

1347 A. Signs? Strictly Firestone, whatever they have.

Q. Did you advertise your Goodyear products?

A. No, sir.

Q. By signs?

A. We were not permitted.

Q. By whom were you not permitted?

A. Mr. Jones.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Cross-examination.

Cross-Examination.

Mr. Mason: If your Honor please, I move to strike the testimony of the witness as having no connection with Goodyear, except insofar as he did buy some Goodyear products and sell them, in which case he was well advised, but I move to strike all of his testimony.

Hearing Examiner Kolb: The testimony will be received, subject to a motion to strike by Goodyear.

By Mr. Thompson:

Q. Mr. Parag, I understood you to say that Tom Jones came down to the station and saw you and found Goodyear and other non-Firestone TBA at your station.

A. Yes, sir.

Q. Maybe I am mixed on my geography, but I think I have seen your station, sir, and my recollection is that it is right at the gate of the Atlantic office building.

1348 A. Yes, sir.

Q. And the Wilmington bulk plant.

A. Yes, sir.

Q. Mr. Jones was stationed there, wasn't he?

A. Yes, sir.

Q. Didn't he go by your station four, five, or six times a day?

A. If he did, I couldn't say for sure, because I wouldn't see him that often.

Q. But the gate to the Atlantic Wilmington office, the bulk plant, is right by your station.

A. All the officials went by there.

Q. Every day?

A. Yes, sir.

Q. And that was Mr. Zinn, the manager?

A. Yes, sir.

Q. And Mr. Joe Connolly, the sales supervisor?

A. Yes.

Q. And the region people would come in for meetings, wouldn't they?

A. I wouldn't know them.

Q. I mean all the Atlantic big brass would be coming by there all the time.

A. It seems to me they would.

Q. So that Atlantic was kind of conscious of the 1349 appearance of your station.

A. Yes, sir.

Q. Didn't Joe Connolly and Tom Jones complain to you quite a lot about the appearance of it.

A. Well, they would complain because they could find nothing else to complain about.

Q. You mean you think your sales volume was pretty good?

A. Well, just how did you mean that, sir?

Q. Well, this was Ed Hill's station for 8 years, was it not?

A. That is exactly what I mean.

Q. During the time Ed Hill had the station you were a customer.

A. Off and on.

Q. You knew the station well from the Hill business.

A. I knew it before he got there.

Q. And even before Hill got there?

A. Yes, sir.

Q. You have known it for a long time?

A. Yes, sir, I did.

Q. Hill recommended you for that station, didn't he?

A. I don't know that he recommended me or not, but any way he had been wanting to sell out for quite a while.

Q. And Hill had gone off to take a job with somebody else?

A. Yes, sir.

1350 Q. As a matter of fact, it was a GMAC agency that he was going to try.

A. Yes, sir. He got that job.

Q. And that is what created the vacancy at this particular station, was it not?

A. Well, I guess that is one way of putting it.

Q. Hill moved out?

A. Yes, sir.

Q. And then you moved in?

A. Yes, sir.

Q. When you moved in, you went over the volume of gasoline that Mr. Hill had sold at this particular station, didn't you?

A. No, I did not. Wait a minute. Mr. Hill stated to me that that station was pumping anywhere up to 40,000 gallons a month.

Q. Yes, sir.

A. That was Mr. Hill's word.

Q. Yes, sir.

A. But Mr. Jones quoted different.

Q. What did Mr. Jones quote you?

A. I really couldn't tell you offhand, but he quoted the annual. I couldn't tell you.

Q. Didn't Mr. Jones tell you that when you took the station over, Mr. Hill had been very recently doing 1351 about 25,000 gallons a month?

A. Oh, I am not complaining about the gallonage of what it sold.

Q. Mr. Hill, for a period of 8 years had run a very high volume station at this point, hadn't he?

A. Yes, sir.

Q. Do you have with you your records of how many gallons of gasoline you sold during the few months you were at this station?

A. No, sir, I don't have that. I didn't bring anything with me.

Q. You took over in August of 1955?

A. Yes, sir.

Q. And that was your first month?

A. Yes, sir.

Q. Who had been Mr. Hill's station manager? A man named Harry?

A. Yes, sir.

Q. What is his last name?

A. Schaefer.

Q. Mr. Parag, for about three months you kept the volume of that station up pretty well, didn't you?

A. Yes, sir.

Q. Would it refresh your recollection if I said that in August 1955, you had 26,600 gallons? Would that be 1352 about right?

A. It would be somewhere close.

Q. And in September around 24,000 or 25,000?

A. I imagine it would be pretty close. I don't know whether it would be exact.

Q. Mr. Parag, just at about that point is it not true that your brother came up from Florida and you put him in charge of that station?

A. No, sir. That was way before that. I didn't put anybody in charge of that station except me, myself.

Q. How about Harry?

A. Harry kept the books.

Q. You fired him, didn't you?

A. No, sir. I laid him off. I laid him off because I couldn't afford to pay him the wages that he would have received. That was pretty high for a service station man. Not because of his insufficient work.

Q. Harry moved to the Esso station just down the street, didn't he?

A. No, sir.

Q. Where did Harry go?

A. Harry, for about a 30 day period, I think to be exact, didn't do anything.

And then he went to a fellow named Rickney.

Q. A service station operator?

1353 A. Yes, sir, Atlantic service station operator, too.

Q. Atlantic?

A. Yes, sir. He was at that time.

Q. Didn't he first go to an Esso station?

A. No, sir, he didn't. Not to my knowledge.

Q. Isn't it a fact that a number of your large accounts were just taken away from your station by Harry when you laid him off?

A. No, sir, I would not say that. No, sir. I dropped one or two of the larger accounts because I found that I was losing money on them, I tried to compromise with the people. I was putting \$.45 oil into their trucks, I was getting \$.30. I was charging \$3.50 for washes—\$3.50 or \$4.00, I don't remember exactly now—and I received somewhere in the neighborhood of \$1.50 to \$1.75 and gasoline

was discounted at two cents. The lubrications were discounted. In other words, it was costing me money to hold them. I tried to prove it to Mr. Jones and the other officials, and they couldn't see it because the gallonage would drop so much. That is what they were after. They didn't care how much money I made. They were interested in how many gallons I was selling, regardless of what it cost me.

Q. It is a fact that your gallonage at that station dropped off from the first month, which you said 1354 was about 26,600—

A. Yes, sir.

Q. Down to about 10,700?

A. Yes, sir.

Q. When did you first learn that Mr. Hill was not satisfied with his GMAC agency and wanted his own station back?

A. When I first learned it? It would be about a week or two before I sold out. In fact the Atlantic Refining Company bought for him. I should say it that way.

Q. Did you continue to be familiar with that station which you had known about for so many years after Mr. Hill returned to it?

A. Do you mean after I sold out?

Q. Yes.

A. No, sir. I was treated like a dog when I went in there. I was more or less known that I wasn't wanted.

Q. I said after Mr. Hill took the station back—

A. Yes, sir..

Q. And started to operate it, did you continue to be familiar with the station?

A. I don't understand the way you are putting that.

Q. Do you know how many gallons a month Mr. Hill did immediately after you left when he took the station back?

A. No. Just like I say, every time that I went around there, they more or less ignored me, just let me know
1355 I wasn't wanted. So wherever I was not wanted. I would not go there, just like anybody else.

Q. Is it a fact—

A. I mean I had no hard feelings to Mr. Hill because he bought me out. I was willing to continue buying his product because, like I said before, I have no complaints about the product Atlantic put out. They have a good product but it is just the way the stations are operated.

* * * * *

By Mr. Thompson:

Q. I would like to go back to the school business that you were talking about. Was it not understood between you and Mr. Jones that if Atlantic gave you this station that you would attend the training school?

A. Not at the time, no, sir.

Q. Wasn't that one of the—

A. No, sir.

Q. —oral conditions Atlantic proposed when they gave you the lease?

A. No, sir. Not at the time. It was after.

Q. You said that you wanted to run this school at your own service station?

1356 A. They were having school there. I couldn't see why I couldn't be there in case something turned up I could be there.

Q. Did you go to the Wilmington school at all?

A. For a while.

Q. For about two days, am I correct?

A. Roughly, yes.

Q. How many other dealers were at the school?

A. I imagine as many as could possibly make it.

Q. But you were there for two days. How many other dealers were attending school at the same time?

A. I really couldn't tell you.

Q. About 35?

A. I imagine, yes. Roughly. You have the exact figures.

Q. You were concerned—

A. I wouldn't question the figures.

Q. You were questioned about the fact that Atlantic wanted to employ someone while you were at school?

A. Yes, sir.

Q. Did not Atlantic offer to pay you while you were at school?

A. Yes, sir.

Q. \$50 a week?

A. Yes, sir.

1357 Q. You had had no prior training in service station operation before this particular station?

A. No, sir, not a service station operator. I worked a little here or there but nothing to operate, for operation.

Q. It is not a simple business to operate a service station, is it?

A. There is no business simple.

Q. You really have to know a good deal about automobiles and lubrication and repairs?

A. Yes, sir.

Q. All manner of such things?

A. Yes, sir, you do.

Q. You mentioned a cancellation form which you said you signed in January?

A. Yes, sir.

Mr. Thompson: May I have this document marked, please, as respondent's exhibit A-6.

(Whereupon, the document referred to was marked Respondent's Exhibit A-6 for identification.)

Mr. Thompson: There has been marked as Respondent's Exhibit A-6, a document entitled "Mutual Consent of cancellation," dated November 2, 1955.

By Mr. Thompson:

Q. Mr. Parag, you hadn't been in this station more than a couple of months before you wanted to get out, isn't that so?

1358 A. Yes, sir.

Q. I show you the document which has been marked Exhibit A-6, and ask you if that isn't your signature on it?

A. May I also—

Q. Just answer my question first.

A. Yes, sir, that is my signature.

Q. You can talk all you like, sir. Go ahead if you have any comment.

A. Yes, sir. I also said that the date was not put in when I signed it.

Q. The date was not put in when you signed it?

A. No, sir. That was undated.

Q. The 2nd of November, 1955, is in Mr. Jones handwriting, is it not?

A. They said this was voided on account of I was in there more than 30 days after the release was signed, November 2nd. So I took it for granted it was torn because in January he told me I had to sign another one, so I signed another one, but it was undated. That was all in good faith.

Q. Back in November you wanted to leave Delaware and go down to some business interests in Florida, didn't you?

A. Yes, sir.

Q. And you asked Atlantic to let you off your lease as of the 3rd of January?

A. May I also remind—

1359 Q. Just answer the question first.

A. All right, sir.

Q. Is that correct?

A. Yes, sir.

Q. You may add to your answer.

Mr. Thompson: I am happy to have him talk all he wants, Mr. Kelaher.

The Witness: I want you people to know the true facts of why that one was signed.

By Mr. Thompson:

Q. You tell us.

A. There was another man for that same service station, but he went back, spoke to the company, he told me he was willing to take it. This was on a Sunday that he spoke to me. I think it was, to be exact. The fellow spoke to me, he went back and talked to Mr. Jones, and I never saw the man any more.

Q. This was in November?

A. I am pretty sure it was. I am not—I don't have that clear a memory to remember the exact date. But that was before the first of the year. I will put it that way. So that is the only one was signed before then.

Q. You have testified that was at a time when you were buying Firestone TBA?

A. Yes, sir.

1360 Mr. Thompson: I ask that there be marked for identification another form of mutual consent of cancellation, as Exhibit A-7.

(Whereupon the document referred to was marked Respondent's Exhibit A-7 for identification.)

By Mr. Thompson:

Q. Mr. Parag, do you recall a discussion with Mr. Connolly and Tom Jones, about February, about a month or so before you left the station?

A. I don't know exactly what date, but I recall a conference between us, yes, sir.

Q. Didn't you at that conference, at that discussion, tell them that you had been losing money on this station?

A. Yes, sir.

Q. And that you really didn't feel up to handling it, and that you would like to drop it?

A. Yes, sir. I told them at the time that the service station was not doing the business because of the price of the gasoline, and that I could not keep it up because of the gallonage. They again reminded me, do not worry about gallonage.

Q. I now show you a mutual consent cancellation dated March 2, 1956, and ask you whether that is your signature on that. Just answer my question first whether it is your signature.

A. That is my signature.

Q. And your signature was witnessed by Tom Jones.

1361 A. Yes, sir.

Q. The sky is the limit, Mr. Parag. Tell us anything you like about the mutual cancellation.

A. The cancellation must be the one that was not dated, and, because I have signed no release to the fact without the permission of my attorney. My attorney handled all the cancellations.

Q. So you are—

A. I am not questioning the signature. The signature is exact.

Q. But you say this wasn't dated when you signed it?

A. Yes, sir. It is because the date was not known, the exact date when the man was buying out, and according to Mr. Jones the exact date has to be on there. That was the—

Q. Which date wasn't on it? That the lease shall expire as of March 8, or the March 2nd date? Which date do you think wasn't on it when it was signed?

A. This was completely blank. This is my signature.

Q. Do you mean the whole form was completely blank?

A. All except for the heavy print.

Q. But this was signed on the second of March, was it not?

A. No, sir. It was not. If I recall, to be exact, I sold out in March, and I would not sign because I feared that there was something ominous coming off between Mr.

Jones and the buyer. That is when I got my attorney. 1362 They used the idea of this cancellation lease over my

head, because it was blank—Mr. Connolly—both did. My attorney has stated, "Well, this was signed all in good faith for another man that was willing to buy."

Q. If I correctly understand you, you are saying that this mutual consent of cancellation dated March 2nd, was just in blank when you signed it? Nothing on it but the print and no typing on it. Is that correct?

A. Not my—

Q. Tell us what was on it when you signed it?

A. Just my signature.

Q. Just your signature?

A. Yes.

Q. And all the rest was blank?

A. Yes, sir.

Q. Did you sign more than one of them on that day?

A. I really couldn't recall that, sir.

Q. Maybe I can refresh your recollection.

A. I know I usually sign three.

Q. Do you mean whenever you sign a mutual consent cancellation you always sign three?

A. They said it was required. One had to go to Reading, one for them, and one for the front office.

Q. That is exactly correct. Your memory on that is very good.

1363 Mr. Thompson: I would now like to have identified as A-8 and A-9 these two documents.

(Whereupon, the documents referred to were marked Respondent's Exhibits A-8 and A-9 for identification.)

By Mr. Thompson:

Q. I ask you to look at two mutual consent of cancellation forms which have been marked A-8 and A-9, and ask you whether that is your signature on both of them?

A. That is my signature. At least it looks it.

Mr. Kelaher: May we see the documents?

(The documents were handed to counsel.)

By Mr. Thompson:

Q. You are familiar of course with Mr. Jones' signature?

A. Oh, yes.

Q. That is Ton Jones' signature on there? On A-8?

A. Do you mean his signature?

Q. Yes.

A. I really have not tried to keep any signature memories in mind.

Q. So you don't know whether that is Mr. Jones' signature?

A. Oh, I imagine it is. I am not questioning it.

Hearing Examiner Kolb: We will take a short recess.

(A recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

1364 By Mr. Thompson:

Q. Mr. Parag, you mentioned some credit problems that you had at this station with Firestone?

A. Yes, sir.

Q. Those weren't the first credit problems that you had with Firestone, were they?

A. With Firestone?

Q. Weren't you—

A. Oh.

Q. Weren't you running a truck before you took the station?

A. Yes, sir.

Q. And you bought your tires from Firestone?

A. Yes, sir.

Q. And did you pay for them?

A. They come after them.

Q. I beg your pardon?

A. They come after them. I didn't want to give them back. They come after them.

Q. You mean they came after the tires?

A. Yes, sir.

Q. That happened before or after you went into the Market Street station?

A. It was before.

Q. And you never did pay the bill for the tires, did you?

A. If I had had my tires they would have had the 1365 money. Because I bought a new car they said if you can afford a new car you can—it is this way: If you can buy a new car—how did they put it now—anyway, they said I couldn't afford a new set of tires. So when I couldn't afford a new set of tires I gave them back to them. I went to the Kiel's Motor Company and bought a new set of tires. And they were paid for.

Q. I think you said that Mr. Jones told you if you didn't buy Atlantic accessories you would lose the station?

A. That's right.

Q. When was that?

A. I can't remember the exact dates. That all happened about the time that I was dealing with other products. The exact dates I can't quote. It was sometime around December I would say.

Q. You also testified that when you went into the station Mr. Jones said you could buy anything you wanted to?

A. Yes, sir. At one time he also said that I could stay there, they weren't going to worry about the schooling again.

Q. Did you ask him—

Mr. Kelaher: I would like to note that the answer of the witness ended on an "and" and I presume he would like to carry on.

Hearing Examiner Kolb: Read the last answer.

(Answer read.)

1366 Mr. Thompson: I defer to you.

Mr. Mason: I have no questions.

Redirect Examination by Mr. Kelaher.

Q. Mr. Parag, it was brought out on cross-examination that your station was located in the vicinity of the Atlantic plant, was that it?

A. Yes, sir.

Q. Were your customers primarily commercial or—

A. I would say pretty much of it was 90 percent commercial.

Q. Would that be trucks?

A. Trucks and other heavy equipment.

Q. Heavy equipment?

A. Yes, sir. Stuff that I had to discount. I tried all commercial.

Q. You were asked on cross-examination about the use of your station as a training school?

A. Yes, sir.

Q. What statements, if any, were made by Mr. Jones prior to the time you took over the station with respect to that subject?

A. Well, Mr. Jones said my station would be used for purpose of schooling. And if I remember correctly, he

asked me the permission of it. I said yes, it is quite all right with me, because I would get paid for it any-
1367 how. My understanding was that I was supposed to get \$50 a week for the use of the station. It would up \$50 a month, which the money part of it did not bother me because the station belonged to Atlantic anyhow, so I let it go at \$50 a month and forgot about it.

Q. When he stated it was to be used at \$50 a month, who was to be trained there? Who were to be trained there?

A. It was supposed to be no one—it was supposed to be the new employees coming in for the new stations.

Q. For Atlantic?

A. Yes, for Atlantic employees. I don't know. At least that is what I gather out of it.

Q. And it wasn't until after you began operating the station that you learned that you were—that you were asked to go to the school in New Castle, was it?

A. Well, no, it was in the Wilmington area, I think.

Q. In the Wilmington area?

A. Yes, sir.

Q. Where was the Atlantic training school located in the Wilmington area?

A. There were three. Mine, another one at Minglerdale—I think that is a New Castle address, too, that is on the Du Pont Highway; and another one down on State Road, I don't exactly know the address. That is on Du Pont Highway, too. That is next to the big truck center.

Q. Where were the classes held which you at-
1368 tended for a few days?

A. The classes—the oral classes—were held at the Shamrock Room, that is what they called it, I am pretty sure, at the Motel de La Ware.

Q. Is that the one near the Delaware River Memorial Bridge?

A. Yes, it is.

Q. How far was that from your service station?

A. I would say at least two miles.

Q. Two miles?

A. Yes, sir. At least that.

Q. In order for you to go to that training school, did I understand that you would have had to hire a man?

A. Yes, sir.

Q. Did you not hire a man for the days you attended the school?

A. What was that again?

Q. Did you hire a man during the days when you attended the classroom sessions?

A. No, sir, I did not hire anyone to take my place because I thought I would only be in that place down there just for a couple of days and I would be back at my own station, which wouldn't have been too bad.

Q. What, approximately, would it have cost to have hired a man as an attendant at the service station?

A. Well, judging from the way I was paying my 1369 men, it would average me from \$75 to \$80 a week.

That is, to get a good man.

Q. I have just one or two questions on the mutual cancellation agreements.

Referring you to Respondent's Exhibit A-7, you were asked certain questions about these documents by counsel for respondent Atlantic. The date March 2nd appears on there. When was this—when did you actually put your signature on there?

A. Well, if I recall correctly, I signed two sets of releases. One was filled in, properly. That was before December. That is when they were putting the pressure on me because I could not stay in the service station because of no schooling. Then they couldn't find anybody for the station and more than 30 days elapsed.

They said automatically it goes back to my original lease of one year. So then we found another man who wanted to buy my service station, in January. I would say January 1. It wasn't the latter part of January. And we signed a blank release, because he said he would not look for a man unless he had a release, and he said he had one but didn't know what day it would come off. I think the fellow was down at Chester. The fellow came down and spoke to me, about the service station, but I never saw the man any more. So this was left blank because of that account.

1370 And if I remember correctly, the requirement of three sets of releases, one for me, one for Reading,— wait a minute. One for this terminal, one for Reading and one for Philadelphia. I think that is how they worked it. Anyhow, I am pretty sure it was three sets. And the dates were not put in. So when they found out I would not sell in March, because they knew I was getting a dirty deal, how it was coming off, then they said, "You know you signed a release." I said, "No, I didn't." They said, "You signed one back in January, don't you remember? It was undated." I said, "You can't use that one." They said, "Why?" I said, "Because more than 30 days had passed and you told me I go back to my own lease." They said, "It is blank, we can fill it in any time."

I knew right away I had to get a lawyer. I explained to my attorney about it and he brought it up there, and my attorney told me you can tear that up.

Q. To the best of your knowledge and recollection, the last mutual consent of cancellation that you signed was in January 1956?

A. That is it exactly, because if these dates were accurate, my attorney would have had no jurisdiction over this, because this would have been later. They would have

thrown my stuff out on the street and said get out. That is exactly the words they were putting in.

Mr. Kelaheer: No further questions.

1371 Hearing Examiner Kolb: Are there any further questions?

Mr. Thompson: No, sir.

Mr. Mason: I have none.

Hearing Examiner Kolb: That is all, Mr. Parag.

(Witness excused.)

Hearing Examiner Kolb: The hearing will be adjourned to reconvene Wednesday, July 3, at 10:00 o'clock, in Courtroom 709, Appraisers Stores Building, 103 South Gay Street, Baltimore, Maryland.

Following Testimony Taken At Baltimore

1373 Hearing Examiner Kolb: The hearing will come to order.

CHARLES H. JOHNSON was thereupon called as a witness for the Commission, and having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaheer.

Q. Will you please state your name and home address?

A. Charles H. Johnson, 306 Westshire Road, Baltimore 29, Maryland.

Q. When did you first become associated with Atlantic Refining Company, Mr. Johnson?

A. In May of 1932.

Q. And what was your position at that time?

A. Service station attendant.

Q. And where was the service station located, do you recall?

A. Cathedral and Eager. That was where I started as an attendant.

Q. In Baltimore?

A. Yes.

Q. How long were you employed in that station?

A. From May '32 to December 31st of '32. And January the 1st of '33 I went to 33rd and Barclay Street.

1374 Q. As an employee?

A. As an attendant.

Q. That was 1933?

A. That's right.

Q. Now, how long did you work there as an attendant?

A. Until the spring of '34 at which time they made me a service station salesman.

Q. What was your function as a service station salesman?

A. Well, at that time they had 13 service station salesmen and I was assigned to each service station and his job was to solicit accounts, keep the service station in line, businesswise, that's sort of a balanced selling thing, and solicit lubrications, wash jobs, tires and accessories.

Q. Was TBA an important factor at that time in Atlantic Service Stations?

A. It had just become, they went into the Lee end of it, the tire end of it, I think in the fall of '32.

Q. After being an Atlantic Service Station salesman did you continue with Atlantic in any capacity?

A. On July the 1st of 1936 the Atlantic leased me the service station at 33rd and Barclay Street, I was a lessee of an Atlantic station.

Q. And were you successful at that time as a service station operator?

A. Yes, sir.

1375 Q. And did you expand your business shortly thereafter?

A. Yes, sir. In 1937 the Atlantic Refining leased me a station on Gwynns Falls Parkway which made two that I operated. And at the end of the same year they made me what they term a key dealer in tires. That's all we had at that time, tires.

Q. Lee tires?

A. Yes. Lee tires.

Q. And what did that involve? The key dealership?

A. That involved the distribution to the service stations in the Baltimore area, just around Baltimore. If, for instance, a station in the North end would need two tires they called on me for them in preference to running to the Atlantic or having the Atlantic driver deliver them. I stocked the tires and that gave easy access to the other dealer, they could just pick from me whenever they wanted.

Q. By "other dealers," are you referring to other Atlantic dealers?

A. Atlantic service stations; yes.

Q. Did you eventually become a distributor of Lee tires and other products?

A. In about the beginning of the war the company said that we couldn't get gasoline and I gave up Gwynns Falls Parkway Service Station. I think I had it maybe two or three years, I'm not sure, but I came back to 33rd Street where my headquarters were and from that point on—you had a tire problem with the tickets, where 1376 a man had to have a ticket, Government—

Q. Requisition?

A. Tire ticket. If you need a tire. In that case the Atlantic would then dump their quota of tires on my driveway, as many as six hundred in a month, and I would have to distribute them according to the Atlantic set up. They had it on a co-efficient figure, I think the word was, that each dealer would get so many tires and they gave me that

list which I in turn delivered to the dealers and that satisfied them as far as the Government was concerned. That's the tickets.

Q. I see.

A. Because the dealer could only get the tires for the tickets he had. In other words, if he sold ten tires he had ten tickets, Government tickets, and Atlantic would tell me to deliver ten tires and I'd pick those ten tickets up which would clear me as far as doing anything wrong with the tire was—

Q. Generally described as an allocation system?

A. That's right.

Mr. Thompson: It was really rationing, I think.

The Witness: Rationing is what it was.

By Mr. Kelaher:

Q. That's right, rationing would be proper.

A. Yes.

Q. And did you at that time begin to distribute batteries or accessories?

1377 A. During the war, yes. We had Weatherbee and Lee batteries, the company couldn't get all of one brand so they had to substitute, and we also had United tires, that was the name of the extra tires we had to handle in lieu of the regular supplier.

Q. And did you carry accessories or have accessories?

A. No, sir; in about '45 they started on a full-scale of TBA—tires, batteries and accessories.

Q. What brands did they carry?

A. Well, for instance, in polishes and cleaners they carried DuPont—

Q. Oil filters?

A. Oil filters were Fram.

Q. Fan belts?

A. Thermoid.

Q. Chemicals?

A. Well, DuPont covered that pretty good, the chemicals, but I'm trying to think of a—Weatherhead, Weatherbird—

Q. Hollingshead?

A. Hollingshead was one, Whiz Products.

Q. Windshield wipers?

A. ANCO, blades, wipers and arms.

Q. What brand of tires and batteries were being carried?

A. In '45 it was Lee tires and Exide batteries.

Q. Now, what effect did that have in or about—you state this was in or about '45 when Atlantic began 1378 their full scale TBA program, is that correct?

A. Yes.

Q. And what effect did that have on your distribution of the products?

A. Well, at that point they had a warehouse at Key Highway and I had tire storage space, so the accessories and what not I picked up at Key Highway—

Q. By "they" are you referring to Atlantic?

A. Atlantic, yes. And they had a man that—a stock-room man who tended to that and I picked the stuff up there and delivered it along with the tires and batteries to the other dealers.

Q. Other Atlantic dealers?

A. Atlantic Dealers, yes, sir.

Q. And did that system continue for some time?

A. Yes, sir; that continued roughly until '46 at which time another dealer entered the picture. He wanted a share in it and they gave it to him, a man named Eckhardt.

Q. What was his name?

A. Thomas Eckhardt.

Q. Where was he located?

A. At Fleet and Fagley Street, in Baltimore.

Q. Is he an Atlantic lessee dealer?

A. He was an Atlantic lessee, yes, sir; same as I. And at the time I told Mr. Bishop who was then in charge 1379 in Baltimore, that he would die on the vine, which he subsequently did within a year and then I was told to go over and buy his stock which I did, and that gave me the entire area for myself again.

Q. Who told you to buy his stock?

A. Mr. Bishop.

Q. Mr. Bishop?

A. The Atlantic representative, yes.

Q. During this period did you purchase tires, batteries and accessories or what was the method by which you obtained control of the products?

A. Well, the Atlantic Refining Company had a man, Mr. Cunzeman, he was the last man, and I would call orders in to him. For instance, if I wanted two hundred tires and one hundred batteries, they would place the order with Lee and Exide. They would be shipped directly to me. Atlantic would pay Lee and Exide, I in turn would pay Atlantic.

Q. And what was the situation with respect to accessories?

A. Well, as near as I can recall the accessories after the Atlantic got out they discontinued their warehouse at Key Highway, then I had to purchase all they had in their warehouse and have a warehouse of my own for a distributing point.

Q. And did you then purchase your accessories direct from the—

A. Yes, sir; I think I did.

Q. (Continuing.) —outlets?

1380 A. I'm not so sure of that, but it was, I think, the Atlantic ordered them—or I ordered them and the

Atlantic okayed it and then the people—supplier shipped it directly to me.

Q. And you paid the suppliers, is that correct, or do you recall?

A. No, I think I paid Atlantic. I think I did.

Q. You think you paid Atlantic?

A. Yes.

Q. And that same was true of batteries and tires, is that correct?

A. Yes, sir.

Q. Now, when you obtained the full distributorship that was about what time? What year? You may have stated it.

A. Well, I bought a house to build a warehouse in the back yard and to have an office in 1947 so it must have been around there that they turned the whole thing over and at that time I might add this, that at that time I wasn't in a position, for instance, if you ordered 200 tires and the bill was \$1,000 I didn't have that kind of money. At that time the Atlantic Refining Company had what they called a B-30. Well, I'd get an OK from them to deliver a dealer and all a given amount of tires on their credit slip, then the Atlantic would allow me credit for that sale against my purchase so that I wouldn't tie my own money. I couldn't. I didn't have it.

Q. Did you incur any expense when you became 1381 the distributor in the area?

A. Yes, sir; in as far as I recall, '48, I bought one house, in '49 I bought the one adjoining for storage facilities, and in '49 then I also bought a garage building up the street which—

Q. Up which street would that be?

A. Barclay. I was on Barclay Street, the whole operation. I bought a garage building which I had thought could be divided partly into warehouse, partly into repair

shop. I had carpenters in there—the insurance regulations made you put tin up over the door as fire prevention. I had carpenters tinning up the back end of this building when the man in charge of the Baltimore Division from Philadelphia, Mr. Ingersol, the first morning that I was there, he looked at the building and he said, "Too small." So, I immediately knocked the carpenters off, told them "get out of there," and moved back to the two houses that I had purchased.

I tried to get the operation in one group instead of having it spread out. So, I subsequently made this larger building into a repair shop which it still is and then I went back to the two houses that I originally purchased and used those for storage and office and what not.

Q. Do you have any idea what your additional cost was for these facilities

A. The first house was \$2,500, the second one was \$4,250. Now, the garage building I did not use, other 1382 than for office space. I didn't use it for a warehouse because it was too small.

Q. And did you have to have an office staff?

A. I had my wife—there were two bookkeepers and a clerk, two truck drivers and two trucks. And there were two additional salesmen. One of them a former employee of Atlantic, and they helped me with sales.

Q. What was your selling territory?

A. Well, it was called the Baltimore District and I have notations, I went to, for instance—

Q. If you could just tell us some of the towns that you covered, I think that—

A. Patuxent Naval Air Station at St. Marys County, Randallstown, Westminster, Reisterstown, Aberdeen, Elkton, NorthEast, Clarkville on the West, Friendship on the West, Glen Burnie on the West, Gambrills—it was all over the place.

Q. And did you sell to Atlantic dealers in those areas?

A. Where Atlantic had stations, yes, sir; and I also sold my own accounts. Now, I had accounts stretched around through there, too.

Q. Were they commercial accounts? So-called commercial accounts? Who did you call on in addition to Atlantic service stations?

A. Well, I had commercial accounts—they are what I term a truck tire account, there they have large 1383 trucks and one of them was the Cloverland Dairy, Arthur Phillips Steel Company, Western Electric was passenger tires mostly.

Q. Now, approximately—

Mr. Thompson: Excuse me. Had you finished the answer, sir?

The Witness: I can't recall all of them. I didn't make notes.

By Mr. Kelaher:

Q. Approximately how many Atlantic service stations were in your marketing area?

A. I would assume, without checking, there were 75 roughly—you can't hold me to that. Some of them were leased dealers, some owned their own property in which case I would deliver to them but I don't think the Atlantic took note of their sales. Now, I'm not sure of that.

Q. I see. They are known, I believe, as contract dealers?

A. Yes, sir.

Q. So you had both lessee dealers and contract dealers?

A. Yes, sir.

Q. What was the principal, taking all of your accounts as a whole, bulk of your sales?

A. Lessees.

Q. Did you sell principally to Atlantic service stations?

A. Principally, yes, sir.

Q. Do you have any idea approximately what your 1384 percentage of sales would be to Atlantic services stations of your total? Was it a fairly high percentage or was it a medium percentage?

A. Yes, it was a high percentage because what I endeavored to do, Mr. Kelaher, was to match their sales with my sales.

Q. By "their," would you explain that. When you say "their sales."

A. For instance, if the Atlantic dealers bought—I'm just going to say 50 thousand dollars worth of merchandise, I in turn would solicit and try to sell 50 thousand dollars of my own.

Q. I see.

A. I mean outside accounts.

Q. To other than Atlantic accounts?

A. To other than Atlantic accounts: Yes, sir.

Q. And did the ratio work out 50/50 that way or—

A. It was running pretty close.

Q. Now, how were sales made to these Atlantic service stations? Who did the selling?

A. Well, they have four, as near as I can recall, salesmen who divided up the territory in and around Baltimore.

Q. Four Atlantic salesmen?

A. Yes, sir; and they had outside salesmen, too. And they would go into a service station and take the order for what the man wanted and write it on their pad and deliver the pad—the copy to me and I would deliver 1385 it. After first getting credit clearance from Atlantic until about 1950 Atlantic stopped carrying the credit and forced me to carry it—didn't force me but told me I had to carry it—and that's how those orders were taken, along with my truck drivers and telephone operation, they'd call in.

Q. Now, was selling done in that manner to Atlantic lessee dealers?

A. Yes, sir.

Q. Was selling done in that manner to Atlantic contract dealers? If you recall.

A. I'm trying to think of a specific case. I don't remember exactly that it was.

Q. Did you normally or someone from your staff call on the contract dealers normally?

A. No, Mr. Kelaher. How that happened was that after the transition from Atlantic to me when one of their contract dealers would call in to the office and want an order they would refer it to me to take the order and give it to me. See. Because I had no record of the contract dealers that they had. They might have one stuck out here in the country somewhere that I didn't know about, and then they'd call me and say "Take him so many tires," and this and that.

Q. So, you did not call on the contract dealers or the lessee dealers?

A. No, sir. Yes, the lessees now. Some of them 1386 we did. My own trucks called on them, when they delivered they would say, "What else do you want? You're out of so and so."

Q. So they would solicit business from the lessee dealers?

A. Yes, sir.

Q. Did you report sales by Atlantic Service stations to Atlantic salesmen?

A. They had, as I recall, a company paper called the Yardstick, and that was my office had to compile a salesman's territory and turn it in monthly to the Atlantic.

For instance, if one man had 13 stations, those 13 stations' sales would be listed against that man's name, his name would go in the Yardstick as having sold 10 thou-

sand dollars worth of material for that given month as would the other salesmen and we had to compile those figures and send it in for their records.

Q. Did you compile them for individual dealers? For example you stated one salesman might have 13 dealers, would you show the names of the dealers?

A. I'm not clear, I might have. See, we would send it in by names. If the 13 stations bought so much. Now, whether it was broken down—I think it was, because then you could see which each station did—what each station did.

Q. Would that show the amount of Lee tires purchased by each station and the amount of—

A. I think, if I'm not mistaken, it was a dollar 1387 volume. Now, I'm not sure.

Q. Dollar volume?

A. I think it was; I'm not sure.

Q. Showed the TBA dollar volume, is that correct?

A. Yes.

Q. That was all you distributed, wasn't it, was TBA?

A. Yes, sir.

Q. Mr. Johnson, how long did you continue as a TBA distributor to Atlantic service stations?

A. Until February of 1951.

Q. What happened at that time?

A. At that time I was in the hospital for an operation and the first part of February, maybe the first week, I had—was just coming out of the anesthetic, the first evening, my wife ran down to the hospital all up-set, and she didn't want to tell me, she didn't know what to do. So, I finally saw there was some trouble. I asked her what was the matter. She said, "Well, the TBA is no more."

Mr. Thompson: I'm sorry, I couldn't hear the answer.

The Witness: She said that the TBA was no more.

So, I said to her, I said, "Well, if that's the way it is there's nothing I could do." I was flat on my back.

By Mr. Kelaher:

Q. Did she explain in any detail why it was no more?

A. Other than she heard at 5:00 o'clock that after-
1388 noon that effective the next morning there was no
TBA, that I wasn't to distribute any further TBA
for the Atlantic Refining Company.

Q. And did she give you any reason?

A. She didn't know and I didn't, nobody knew, and I
was groggy, I wouldn't have known if she had told me.

Q. Then did you subsequently learn why there was no
more TBA for you?

A. The only thing I learned was that the Firestone
Company had come in and taken the thing over and I was
out. That was it. I mean, I had no—and I think if I recall
that that was strictly grapevine, I didn't have any—

Q. No official notice from Atlantic?

A. I don't think I did. I might have.

By Mr. Kelaher:

Q. Did you thereafter make any sales of TBA to At-
lantic service stations?

A. Only to the extent of an adjustment. See, if
1389 you had a tire that went back the Atlantic service
station would adjust that tire and I would replace
it for that. But there were no more sales. There was just
to clear the thing up. It was—as effective the next morn-
ing there was no more.

Q. So the market was lost overnight, is that correct?

A. Yes, sir.

Q. And prior to that time you lost the market over-
night what advertising appeared in Atlantic service sta-
tions?

Mr. Thompson: Now, if your Honor please, again I wish to object to the recurring form of Mr. Kelaher's questions. He just cannot seem to resist trying to put some concept which he may have of this case in the mouth of a witness. He has just said "lost overnight, didn't you?" I mean, that was not the witness' statement. I would be deeply grateful if your Honor would request Mr. Kelaher to ask questions in the proper manner.

Mr. Kelaher: Your Honor, it was my impression, based on his testimony, that he testified that he lost the business overnight.

Hearing Examiner Kolb: He testified to that extent but I don't think you ought to paraphrase the witness' answer in making your questions under any circumstances.

Mr. Kelaher: Thank you, your Honor, I'll try to avoid that.

By Mr. Kelaher:

Q. Up to February of '51 period what advertising 1390 of TBA appeared in Atlantic Service stations, if you know?

A. Lee tires and Exide batteries.

Q. And if you know which brand of tires, batteries and accessories were purchased by Atlantic service stations up to that time?

A. Up to that time in '51?

Q. Yes.

A. Lee tires and Exide batteries and their associated accessories that the company approved.

Q. Now, after that time, if you know, what advertising appeared in Atlantic service stations, after February '51? Or thereabouts.

A. Well, they came around and took the Lee signs down and put up Firestone.

Q. By "they" who are you referring to?

A. I imagine the company or the Firestone, they lettered windows in the more modern stations, the older stations they put up Firestone tin-signs I call them.

Q. By "the company" I suppose you are referring to Atlantic, is that correct?

A. That's right. Well, it may have been Firestone that did it, I don't know, but it was what was done.

Q. That's right. Atlantic or Firestone.

Mr. Correa: I think we should move to strike what it may have been.

1391 Hearing Examiner Kolb: Let it go.

Mr. Correa: If we are keeping an orderly record.

By Mr. Kelaher:

Q. Do you recall whether Exide battery signs appeared in Atlantic stations after about February of '51?

A. I couldn't recall because I didn't go into them any more after that, that's only not on business.

Q. But you do recall the Firestone TBA signs, is that correct?

A. It was just Firestone, I don't know that it had TBA, you know, just Firestone.

Q. All right.

Was an effort made by you or by Lee to retain any portion of that market after February of '51?

A. Well, if I'm not mistaken the Lee people notified my wife that evening of the transition and effective immediately they sent salesmen out covering all the dealers and trying to retain some of them.

Q. And do you know of your own knowledge whether any part of that market was retained by Lee?

A. Only one I can answer for is myself. My market, my particular station was retained by Lee, and I also added Firestone in with it.

Q. When you stopped selling TBA to Atlantic service

stations did you have any inventory on hand, any stock on hand?

A. Yes, sir; I had 14 thousand dollars worth of 1392 accessories, I think. That was my inventory. In that period—in February of '51, for that month, I think I owed the Atlantic Refining Company 18 thousand dollars at which time I told them if they—because they took the market, if they would accept those accessories at 14 thousand or whatever they inventoried them, I would pay the difference and squash the bill. We'd just break off even.

Well, I heard no word in March; I heard no word in April; and in the beginning of May Mr. Wanders in Charlotte who is a credit manager or was some credit representative; and here I might have to digress because to understand this thing in a service station, if you come in and have an Atlantic credit card your purchase is put on the credit card which goes in to the company and gives me cash back—it did at that time. Now, it is used as cash, but then they gave me a check back. Well, Mr. Wanders in May started to snatch these Atlantic gasoline tickets which would have knocked me flat. I couldn't do a thing. I contacted the Baltimore office and I got no where as far as doing anything about it—at that time I might add that a transition took place in the Baltimore office, the man who was in charge, Mr. Bishop, left and Mr. Burns then came in in his job. So, this Wanders kept taking the gasoline tickets against my bill with them and on May the 30th, 1951, I wrote a letter of resignation into the Atlantic Refining Company that effective June the 1st or a 1393 month later, I wanted to be relieved of the service station. I wanted it clear that they had to bring a man in there to take it over to take over these accessories that I was stuck with and couldn't get rid of as well as having the money to take the service station over.

Well, that brought some men in from Philadelphia, I

believe, and then they said, "Well, you haul the accessories back to us and we'll give you credit." I hauled them back to them. They sold them to other dealers, not me, and I paid the difference in the bill and then we squared off.

Q. You hauled them back to Philadelphia?

A. Atlantic, no, sir; to the Key Highway office.

Q. In Baltimore?

A. Yes, sir.

Q. Now, you were talking about gasoline tickets. I would like to have that clarified. Are you referring to sales of gasoline made at your service station at 33rd and Barclay?

A. Yes, sir; gas, oil and what not.

Q. And I wish you'd correct me if I'm incorrect about this, but instead of—such sales were made on Atlantic credit cards, is that correct?

A. That's correct.

Q. And you normally received your cash back from Atlantic?

A. That's right.

Q. But at this particular time you speak of you 1394 were not receiving the cash back from Atlantic?

A. No, sir; he notified us that against that bill he was taking those gasoline tickets which had no connection at that time other than he wanted their money at that time. I couldn't survive if he was taking my credit tickets. It was impossible. I just couldn't do it. In some cases, Mr. Kelaheer, I might go further, in the case of 10 people coming in and they buy on a credit card that's so much money. If 10 come in and pay cash that's so much money again. But the credit card went in to Charlotte, they mailed me a check back for that at that time. Well, I only had the money coming in from the cash sales to operate on and I couldn't do it.

Q. And the credit sales were being applied against the balance owed Atlantic?

A. Right.

Q. And at that time you had a 14 thousand dollar inventory of accessories?

A. At that time. It took them three months to clarify the thing and Mr. Burns, I think, is the man that pulled the strings or whatever he did to get the thing clarified. I give him credit for that, I think.

Q. Now, after this transition to Firestone, did you attempt to sell Lee tires, Exide batteries or the accessories that you had on hand to Atlantic service stations?

A. No, sir; only to the extent of, as I say, an 1395 adjusted tire or a bad battery or something like that. It wasn't any more sales.

Q. And why didn't you solicit such business from Atlantic service stations?

A. Well, as near as I can recall their salesman handled the Firestone end from that point on. Now, at that time I might add that the Firestone people came to my home, I was still under the weather, and they offered me a quarter of the city, just one-quarter. Now, they wouldn't take the accessories back that the Atlantic had or I had for Atlantic, but they would restock me completely with tires and stuff under the Firestone set-up, but only for a quarter of the city. Well, I couldn't live on 10 or 12 service stations.

Q. They offered you a distributorship for a quarter of the City of Baltimore?

A. That's right.

Q. If you would transfer to Firestone TBA?

A. That's right. But without taking my 14 back and trying to get some squared up that way. See. I was still stuck with that.

1396 Mr. Kelaheer: May we have a short recess?

Hearing Examiner Kolb: All right, we will take a recess.

1397 (Whereupon, a short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

By Mr. Kelaheer:

Q. Mr. Johnson, what effect, if any, did the switch by Atlantic from Lee and Exide and associated accessories to Firestone have on your business as a distributor?

A. Well, I'd say it was 85 percent cut-off.

Q. Eighty-five percent cut-off.

Mr. Kelaheer: Thank you. No further questions.

Hearing Examiner Kolb: Cross-examination.

Mr. Correa: If your Honor please, I move that the testimony of this witness in its entirety be stricken as to the respondent Goodyear on the ground that it had no connection whatever or any relation to any of the issues arising under the complaint and answer herein with respect to the respondent Goodyear.

Hearing Examiner Kolb: The testimony will be received subject to a motion to strike by Goodyear.

Cross-Examination by Mr. Thompson.

Q. Sir, I represent the Atlantic Refining Company in these proceedings and the gentleman on my left represents the Goodyear Company. Can you hear me, sir?

A. I can hear you.

1398 Q. I think you probably know, sir, that you were one of two key dealers of Atlantic before the change-over South of the Mason-Dixon Line.

A. No, sir; I don't know how many they had. I was only in Baltimore.

Q. You know of no others?

A. I do know one in Richmond, I think, that had one.

Q. Who was that, sir?

A. He visited me once, but I couldn't recall his name. I know that he had the same set-up or a similar set-up.

Q. At 33rd and Barclay, you ran an extremely successful station, did you not?

A. Yes, sir.

Q. Mr. Kelaher did not ask you on direct examination about what happened to that station.

Is my impression correct that you continued to be a lessee dealer yourself until 1953 at that station?

A. '53. Yes, sir.

Q. Is my impression also correct, sir, that you had two very loyal employees named Pool and Hunt who took that station over when you gave up your lease?

A. Right.

Q. Now, your termination of that lease relationship was not at Atlantic's request, was it?

A. No, sir; it was my physical condition.

1399 Q. And is it not true that you and the Atlantic between you financed Pool and Hunt in that enterprise when you gave up the station?

Mr. Kelaher: Objection, your Honor. I believe we are going beyond the scope of the direct.

Hearing Examiner Kolb: Overruled.

A. Atlantic and I financed?

By Mr. Thompson:

Q. Didn't you help them get started in business?

A. Yes, sir.

Q. And Atlantic helped too, did they not?

A. I think they helped, yes.

Q. Now, over the many years that you had an association with Atlantic your general relationship was extremely pleasant and a happy one, wasn't it?

A. Yes, sir.

Q. And you have got a lot of good friends in the organization?

A. Yes, sir.

Q. And they still are your friends, are they not?

A. Yes, sir.

Q. And you still see a number of them fairly frequently, don't you?

A. That's right.

Q. As a matter of fact, sir, don't you just as a matter of sentiment still go to Atlantic dealer meetings?

1400 A. Yes, sir. I have a standing invitation, I think that is what they called it.

Q. Yes, sir.

You referred to the fact that you were in the hospital in February of 1951.

A. Right.

Q. When you learned through your wife of the adoption by Atlantic of the Firestone Sales Commission Plan?

A. That's right.

Q. Do you not recall, sir, that before your wife gave you this information Atlantic had called a dealer meeting at the Southern Hotel and that you were in the hospital at the time?

A. That could have been. I was in the hospital. I didn't get notified, you know—

Q. (Interposing.) But didn't you subsequently learn from your dealer friends—

A. No, sir.

Q. Excuse me, I hadn't finished my question. Didn't you subsequently learn from your dealer friends and from Atlantic that this whole question had been taken up at an Atlantic dealer meeting in Baltimore?

A. No, sir.

Q. At the Southern Hotel?

A. No, sir. The only notification I had, I think, was from the Lee Tire and Rubber Company who notified 1401 me and my wife like at 4:00 o'clock in the afternoon.

Now, that's as near as I can recall. I had no official notification whatever.

Q. But there were a number of subsequent dealer meetings at which the Firestone Plan was discussed with the dealers, were there not?

A. After I got out?

Q. Yes, sir.

A. Oh, yes; after I was out of there, yes. I went to them, as a matter of fact.

Q. You recall one particularly, I think, which took place in August of 1952 at the Plaza Park Hotel?

A. Park Plaza?

Q. Park Plaza, is that the name of it, Park Plaza Hotel in Baltimore?

A. Yes.

Q. And do you recall generally what happened at that meeting?

A. I can't say—well, did you say in '52?

Q. Yes, sir.

A. I think they had a Firestone display of the batteries and tires and their salesman. I'm not certain of that, but I think it was.

Q. Do you know Dick Mulholland, the Atlantic TBA coordinator?

A. Mulholland. I think I have met him, but at the time a fellow named Heideman, Sid Heideman was the man as I recall.

Q. Do you recall a meeting at which Mr. Heideman introduced Mr. Mulholland and talked about the general operation of the Firestone Plan?

A. No, sir.

Q. Do you recall a meeting at which the dealers were

told by an Atlantic representative that the company was not in any sense married to Firestone or any other company and that the acceptance or rejection of the Firestone Plan was entirely up to the dealers?

Mr. Kelaher: Would you repeat the question, please? (The reporter read the pending question.)

Mr. Kelaher: Thank you.

A. I think there was a meeting to that effect, yes, sir; after I was out of the thing.

By Mr. Thompson:

Q. But before you left your station, sir, was there not such a meeting?

A. I think there was; yes, sir.

Q. Now, Mr. Johnson, was it not made very clear to you and the other dealers by the Atlantic people that under no circumstances would there be any forcing or compulsion of the Firestone Plan upon you?

A. I think they understood that. I think that there—after Firestone took over there wasn't any forcing or compulsion. I think they understood that.

Q. Now, in your particular case, sir, you had a 1403 station which after the change-over continued to handle Lee and Exide just as before, isn't that correct?

A. That is true, except that I handled Lee and Lee batteries, I didn't handle Exide.

Q. I beg your pardon, sir. After change-over you handled Lee batteries?

A. And Lee tires.

Q. And Lee tires.

Did anyone representing Atlantic ever tell you not to carry those Lee products?

A. No, sir.

Q. Did you ever have any difficulty in lease renewal because of carrying non-sponsored brands?

A. No, sir.

Q. Did not Atlantic representatives tell the dealers at the meeting that their primary interest was in supplying a program under which the dealers could make the most sales and the best profits, or words to that effect?

A. Words to that effect, I think they did.

Q. And didn't they ask all the dealers to comment upon whether they did or did not like the Firestone plan?

A. That's true.

Q. And is it not true that a great majority of them indicated that they did like the Firestone Plan?

A. As I recall they were satisfied as near as I can recall.

1404 Q. The one thing that you said, sir, I didn't get.

After you got out of the hospital didn't Mr. Cummings, the Firestone Store Manager, come to see you about taking a Firestone Master Supply distributorship?

A. That is true, he and his credit man, whoever, I can't recall his name, but they came to my home and I was still under the weather and they offered me a quarter of the city and they wanted to take over my garage building as a Firestone store. And my reply to them was, "No."

Q. But the matter of the quarter of the city, sir, was that the quarter of the city or the quarter of the Baltimore District?

A. City.

Q. City?

A. As near as I recall, sir.

Q. I put it to you, sir, that they offered you the entire City of Baltimore.

A. Well, my wife was there, and that's as near as I can come to it. That's been a long time. I thought it was a quarter of the city and they wanted to take that garage building over as a Firestone store which would have meant that I would have had to have spent additional money

with the money I had tied in this warehouse that I couldn't get use from.

Q. Is it not also true, sir, that you were, having been in the hospital, didn't want to take on the responsibility of the introduction of a new line to the Atlantic station 1405 tions because it was too much work?

A. That in itself is partially true. The main reason behind it all was that I have had dealings before and the Firestone line comprised refrigerators, outboard motors and what not, and I would assume that it would take quite a bit of money to start a line like that and I didn't feel that at that time I should do it.

However, I might add that the dealings that I had with Firestone as opposed to Lee were different. In part I will cite tire shipment that they made to me in which a tire was stuffed so that it couldn't be sold. Well, I was about four or five months trying to get that thing straightened out. I don't know whether it ever was straightened out or not, but I had reason to believe that that wouldn't be the best thing in the world for me.

Q. Do you still retain an active interest at all in the 33rd and Barclay Street station run by Pool and Hunt?

A. I'm what is known as a helper.

Q. Yes, sir.

A. I work from 11:00 to 4:00 in the service station while those boys are about other duties.

Q. And that station is still carrying Lee as its primary line, is it not?

A. I would say so. They have Firestone also.

Q. And miscellaneous accessories?

1406 A. Yes; they have miscellaneous accessories as well as, I think, some Firestone.

Q. Is it a fair statement, sir, that Pool and Hunt buy whatever TBA that they choose and select and whatever they want to buy?

A. I'd say it was a true statement.

Q. Now, sir, in the days when you were a key dealer for Atlantic did you get around personally among the service stations—did you personally solicit or did you leave it to your salesmen?

A. No, sir; I did some. See, how that happened, I had two trucks, the Atlantic at the time wanted me to cover the city, for instance, on schedule. Well, if a man needed tires Monday and his delivery day wasn't until Wednesday, you can't hold it, so I'd have to special those out, I'd put them in my car and take them to the particular dealer or customer and that way I did occasionally talk to them.

Q. Yes, sir.

A. And then over the phone quite a bit.

Q. Did you get to know the proprietors personally in the days when you were a key dealer handling Lee and Exide?

A. Well, they've never been to my home. I have met them in the station and we've talked and so forth.

Q. Now, (there are quite a number of those lessees who are still with Atlantic, aren't there?

1407 A. Well, having been away now four years I wouldn't know. I know of several of them that I can recall but they have a turnover, and, of course, I don't have any access to their records, so I wouldn't know.

Q. You don't get to the stations any more to see what they are actually carrying?

A. No, sir.

Q. Do you get to the Atlantic stations in the vicinity of 33rd and Barclay frequently?

A. No, sir; I can't walk, I'm lucky to be getting around here.

Q. So that you have no personal knowledge of what these stations are presently carrying by the way of TBA?

A. No, sir.

Q. Are you still a distributor, sir, for Lee?

A. No, sir.

Q. When did you give that up?

A. This is '57, as near as I can recall '54 or '55. I wouldn't know exactly. I still had accounts that I had to service, I mean as far as tires were concerned I couldn't get out of there, I had to replace Lee with Lees.

Q. But after February or March of '51 when Atlantic adopted the Firestone Sales Commission Plan Program did you continue actively yourself or through your salesmen to solicit the Atlantic stations to buy Lee and Exide?

1408 A. I don't think I did. I know I had a Bethelene station, I know I had an Amoco, they were competitors that I sold, and then my regular accounts I think I did. That's the commercial accounts, but I didn't solicit service stations.

Now, there may have been one that needed a tire or tube that got them, but that would be it.

Q. Mr. Johnson, before the change-over I understood you to say that you tried to match your business 50/50 between Atlantic service stations and outside accounts.

A. That's correct, sir. That was my aim.

Q. I think you said that before the change-over you had been pretty successful in working that out proportionately in that way.

A. I'd say that I was. I solicited accounts and sold accounts and so forth in addition to handling the Atlantic.

Q. After the change-over did you continue to solicit the non-Atlantic accounts?

A. No, sir; I held what I had and I say—if they dropped—some of them hadn't dropped off yet, if they did I dropped off. I couldn't call on them if they were a block away so I couldn't—

Q. Certainly, the drop off on the non-Atlantic accounts had nothing whatever to do with the Firestone program?

A. I wouldn't say it did. No.

Q. Mr. Johnson, are you sufficiently familiar today with the operation of the station at 33rd and Barclay to 1409 know how the Atlantic credit cards are honored by Pool and Hunt?

A. Yes, sir.

Q. You testified, sir, as I recall it, that when you were operating the station yourself you sold Lee tires and at that time I guess Exide batteries?

A. Yes, sir.

Q. At the station to holders of Atlantic credit cards and that Atlantic would remit to you?

A. That's right. Now, they use that as cash instead of—before they would send me a check for it and that's what they took when I sent the tickets.

Q. Today when Pool or Hunt sell a Lee tire or Lee battery to the holder of an Atlantic credit card, that is the equivalent of cash to them, isn't it?

A. Yes, the company approves it and regardless of what they sell on that card it's approved. I mean the company remits.

Q. Certainly. Atlantic has no objection to the charging of Lee tires or Lee batteries on Atlantic credit cards, has it?

A. I don't think they have. At least I've never been called on it, or they haven't to my knowledge. They might have been called on the amount of the bill, like you have to get permission if it's a hundred dollars.

Q. If it's more than a hundred dollars.

A. Yes, something like that.

Q. That is a matter of the individual credit of the 1410 holder of card, is it not? That is just a question of how much credit the individual has?

A. That's right.

Mr. Thompson: May I have one minute, sir, to confer with Mr. Correa?

Hearing Examiner Kolb: Yes.

Mr. Thompson: Thank you very much, sir. That is all.

Mr. Kelaher: I have a few questions.

Redirect Examination by Mr. Kelaher.

Q. Mr. Johnson, prior to February of '51, what was your total number of accounts, in numbers?

A. I would say between 100 and 150, as near as I can guess, I'm just guessing.

Q. And of that number how many were Atlantic accounts?

A. Well, I actually recall 38, but there were more of them because I can't enumerate right on down the line every service station they had. For instance, Annapolis did have four stations in it, I think, and that was four dealers; and as I try to recall I would say from 50 to 75, roughly. Now, I don't know.

Q. Would it be approximately about 50 percent of the total number of your accounts?

A. Seventy-five—well, actually I think it would be more of a percentage in their favor, that is they had more 1411 accounts than I did. I had my own accounts and they had their service stations. Well, they had more service stations than I had individual accounts, but how many I couldn't say.

Q. Now, you stated with respect—you have made references to 50 percent, you also made a reference to an 85 percent figures. Does that have reference to sales volume or to number of accounts?

A. Sales volume, everything.

Q. Your sales volume was greater from your Atlantic

accounts than from your commercial accounts, is that correct?

A. No, I tried to, Mr. Kelaher, digressing just a minute, when this thing all came about, when they decided to make a distributor, Mr. Bishop, as I recall said, there was only one man to give it to, that I had done an outstanding job and I should be the man because nobody else had sold what I had sold and on that basis, then, I started to try to equalize, if they did, say, 50 thousand dollars worth of business, I tried to equal it.

Q. Well, were you always successful in doing that?

A. Well, no, it's a rough go. I did my best, that's all I can say.

Q. Now, when did you—it was developed on cross-examination that you were a lessee dealer at 33rd and Barclay in or about February of '51 and after that period. When did you start carrying Firestone tires at that station?

1412 A. Well, see, that's going to be hard, Mr. Kelaher, because I had a warehouse down in back of that station and in the station maybe I didn't carry any, I don't know, but in the warehouse I did have some as well as Lee.

Q. Was that before or after the switch-over by Atlantic to Firestone?

A. Well, it was up until the time I wanted to resign the service station; like, they had a salesman named Hoffman who sold me some materials that I subsequently resold but tires were still tight, I mean, you just couldn't go out and order a million of them and get them.

Q. Who did you purchase the Firestone tires from?

A. The Firestone Tire and Rubber Company.

Q. Through Mr. Hoffman, I'm not quite clear.

A. Through Mr. Hoffman, he was the salesman who had my territory.

Q. And who was he with?

A. Firestone.

Q. I see.

A. He was the route salesman, I think they called him. He went around to all stations and everywhere.

Q. I see. Now, having sold both Lee tires and Firestone tires, how did your purchase price compare on Lee tires versus Firestone tires?

A. Well, the Lee had the better deal, that is discount-wise.

1413 Q. The price was lower on Lee tires than the Firestone tires?

A. That's right, that is the discount. I don't think the basic price of the tire was. Lee would give you something like 23 percent off and Firestone only 17.

Q. Would that ever increase your profit margin on the Lee tires over the Firestone tires?

A. Yes, sir; and at that time they had to my way—in my opinion, they had a better guarantee in every respect than Firestone had.

Q. And was that known as the "Road hazard guarantee"?

A. Yes, sir.

Q. And Firestone did not have that guarantee? Did it?

A. As far as I recall it was workmanship and material.

Q. Only on Firestone?

A. That's as far as I recall. Now, they may have had it, as far as I know it was material and workmanship.

Q. On cross-examination you were asked some questions about being offered a quarter of the city as a Firestone—as a distributor of Firestone products to Atlantic service stations, is that correct?

Mr. Thompson: No, those weren't the questions. I asked him whether he hadn't been offered the whole city, Mr. Kelaher.

By Mr. Kelaher:

Q. Well, with that qualification I would like to 1414 ask you some questions about that.

A. Yes, sir.

Q. Would that have involved additional expense to undertake that distributorship?

A. As I recall, Mr. Cummings and the Firestone credit man came to my house, I was in sound financial condition, and to have done that and taken their whole line would, as near as I could guess, would have cost ten or fifteen thousand—whatever their line would be for everything from brake shoes to outboard motors, and it would have been all under my wing, so to speak. I still had the 14 thousand with Atlantic hanging and I would have had, say, 10 or 15 hanging with Firestone.

Q. Ten or fifteen thousand dollars?

A. Yes, sir. Atlantic, until I forced the issue, that's asked them to get out of the service station, I got nowhere for three months. I was left high and dry.

Q. With the 14 thousand dollar inventory.

A. That's right.

Q. Is that correct?

A. Yes, sir.

Mr. Kelaher: No further questions, your Honor.

Hearing Examiner Kolb: Any further questions?

Mr. Thompson: No further questions.

Hearing Examiner Kolb: No further questions. Thank you very much, Mr. Johnson.

1415 (Witness excused.)

Hearing Examiner Kolb: Any further witnesses?

Mr. Kelaher: No further witnesses, your Honor.

Hearing Examiner Kolb: The hearing will adjourn to reconvene at Baltimore, Maryland, on Monday, September 16, 1957, Room 709, Appraisers Stores Building, at 11:00 o'clock a. m.

1417 Hearing Examiner Kolb: The hearing will come to order.

There will be no smoking in the hearing room during the course of the hearing.

Mr. Kelaher: I have been advised by counsel for the Shell Oil Company, and counsel for the Firestone Tire and Rubber Company, that they have filed motions to quash subpoenas duces tecum served on them. One such subpoena was served on Firestone on or about October 1 or 2nd. Another subpoena was served on Firestone on or about November 7. And there was a subpoena served on Shell on or about November 7.

In view of the fact that we will be holding hearings for most of the next ten days when we will be required to file answer, I would like to make a motion for extension of ten days within which to answer these motions.

Hearing Examiner Kolb: Leave will be given to file an answer 20 days from today.

* * * * *

1545 Hearing Examiner Kolb: Are there any further witnesses?

Mr. Kelaher: Yes, we have, your Honor, in just a moment.

NICHOLAS GOVORUHK was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your full name and home address?

A. Nicholas Govoruhk. My home address is 2329 Harford Road, Baltimore 18.

Q. Are you connected with the AA Distributing Company?

A. I am.

Q. And the Baltimore Battery Company?

A. Yes, sir.

Q. What is the relationship of the Baltimore Battery Company to the AA Distributing Company?

A. The AA Distributing Company is a specialty in TBA lines of various products that I get from manufacturers all over the country.

Q. When was the AA Distributing Company incorporated?

A. It is not incorporated. It is a company.

Q. Are you the sole owner of the company?

A. I am.

Q. Would you please state what the Baltimore Battery Company is, and what its relationship is to AA Distributing Company?

A. Baltimore Battery Company, I started that in 1951, in April. Do you want me to go into details?

Q. Are you the sole owner of the—

A. I am, of the Baltimore Battery Company.

Q. Is that a subsidiary related to the AA Distributing Company?

A. That's right.

Q. Do you make a distinction between the AA Distributing Company—

A. Yes, I do. I sell batteries practically only with Baltimore Battery Company.

Q. What products do you sell with the AA Distributing Company?

A. They number quite various.

Q. What type, what lines? Do you sell tires?

A. Well, I sell tires, I sell voltage regulators.

Q. Accessories?

A. A number of things. If you want me to go into detail.

1547 Q. Do you have a line of accessories which are sold by AA Distributing Company?

A. Yes, sir.

Q. So that you sell tires and accessories through AA Distributing Company presently, and you sell batteries through Baltimore Battery Company?

A. That's right.

Mr. Kelaher: Your Honor, I think it should be noted that when I refer to "your company" it means referring to specific products as defined here.

By Mr. Kelaher:

Q. Mr. Govorukh, what line of TBA do you sell?

A. Presently?

Q. Yes, presently.

A. What line of TBA?

Q. Yes.

A. I sell batteries—

Mr. Correa: I object to the question as being outside the scope of the issues of this proceeding.

Mr. Kelaher: I am merely trying to establish at this time what this man's business is.

Hearing Examiner Kolb: Are you withdrawing your objection?

Mr. Correa: Yes, I will withdraw the objection since it is preliminary.

1548 By Mr. Kelaher:

Q. Would you state the principal TBA products sold by your company, the brands?

A. The brands?

Q. Yes.

A. Goodyear, Bowers.

Q. And give the products too.

A. Batteries—Goodyear, I would say about six months

from this month I could have sold and have sold a great number of TBA products listed in the Goodyear catalogue.

Q. Are you a Goodyear distributor?

Goodyear TBA distributor?

A. I could at that time have bought anything that they sold at distributor's price.

Q. What time are you referring to?

A. In 1956.

Q. Let's go back and start in 1951 with Baltimore Battery Company. Beginning with 1951, what products did you sell, referring to TBA products?

A. I first started my business in '51 and I got in contact with Goodyear, and they sent a salesman down on Maderia Street at the time, in '51. I think that the gentleman's name was Bucker, who was my salesman at that time.

He was a representative of Goodyear, which is designated as Goodyear Service Store. That is where I was buying my products at that time.

1549 Q. So, that if I understand you correctly, you were buying Goodyear TBA at that time and reselling it, is that correct?

A. Yes, sir.

Q. To what class of accounts did you re-sell Goodyear TBA?

A. I tried to sell it to service stations, trucking concerns, taxicabs, each and everybody that would buy it.

Q. You mentioned Bowers Batteries. When did you begin to sell Bowers Batteries?

A. I practically sold them just as long as I have been in business.

Q. What is your sales territory?

A. I have no specific sales territory. I go as far as Lynchburg, Virginia; Washington.

Q. Do you sell in the Metropolitan Baltimore area?

A. Yes, sir.

Q. And are you the outside salesman for your company?

A. I am one of them.

Q. How many do you have?

A. At one time I had two.

Q. How many trucks or delivery cars do you have?

A. At present?

Q. Presently.

A. I have one car and one truck.

Q. And prior to 1957 did you ever have any more?

A. I had two trucks and two cars.

1550 Q. When was that?

A. In 19—the first part of 1956 to the—I will say the whole year practically of 1956.

Q. Up until that time?

A. Yes, sir.

Q. Do you sell any other brand of batteries besides Goodyear or Bowers?

A. Yes. At the one time I sold the Allied Battery, which is a subsidiary of Price Battery Manufacturing Company.

Q. Is that in Hamburg, Pennsylvania?

A. I think it is.

Q. You stated that you sold Goodyear TBA products since 1951, is that correct?

A. Yes, sir.

Q. Do you compete with other sellers of TBA products in the Metropolitan Baltimore area or other areas, in your sales area?

A. I compete with everybody that is out there.

Q. Could you give us the names of some of the companies with whom you compete in the Metropolitan Baltimore area?

A. You mean service stations or general trade?

Q. All jobbers.

A. R. J. Loock, Hunt, Baltimore Gas Light, Bowers Battery Company, Goodyear.

Q. Do you compete with Brooks-Huff Company?

A. Yes, sir.

1551 Q. Do you compete with Stuart-Pressley?

A. Yes, sir.

Q. Do you compete with Goodyear's own service stores or district stores?

A. Both of them.

Q. Are there Atlantic Service Stations in your sales district?

A. Yes, sir.

Q. Do you solicit it—

Mr. Thompson: Mr. Kelaher, I don't think we have had the territory defined, have we?

Hearing Examiner Kolb: Yes, right at the start he gave it.

Mr. Thompson: I think he said he sold in Virginia, but I don't think it has been defined.

Mr. Kelaher: He said as far south as Lynchburg, Virginia.

By Mr. Kelaher:

Q. When were you first given a Goodyear TBA distributorship?

A. You say TBA distributorship?

Q. Well, a distributorship. Explain what type it is.

A. That is the latter part, which is in December, 1955.

1552 Mr. Correa: May the record show that the witness refreshed his recollection by looking at some papers which he holds in his hands.

By Mr. Kelaher:

Q. In December, 1955, what type of distributorship were you given by Goodyear?

A. I was handed—again, I will refer back to a couple of books here; one is a Goodyear catalogue, which can be gotten in any counter of a Goodyear service store, Mount Royal and Oliver Streets, which is the address listed on this book.

Also, to use the right terms designated here, this says "distributors price" that the service stations would buy the TBA products at the price.

Mr. Correa: May I have the question and answer read back please.

(The reporter read the question and answer.)

Hearing Examiner Kolb: I don't believe the witness finished the answer, had he?

Mr. Kelaher: I don't believe so.

The Witness: There is another book, and how many underneath that, I don't know, which at the time which I got it, in 1956, was a white book that I could buy the TBA products, of which I could re-sell it and make a profit in the yellow book, the distributor's price.

By Mr. Kelaher:

1553 Q. With whom did you talk at Goodyear in connection with your Goodyear distributorship?

A. Bill Allen, which was at that time the manager of Goodyear's service store on Mount Royal and Oliver.

Q. Would you fix that time again, please?

A. That was the latter part of December of 1955.

Q. Do you recall the conversation you had with Mr. Allen at that time?

A. Yes, sir.

1564 Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: Let's adjourn until 10:00 o'clock tomorrow morning.

Mr. Correa: Mr. Examiner, may I ask an instruction to the witness that he bring back with him tomorrow the same papers which he had on the table here today, including specifically those invoices?

Hearing Examiner Kolb: You will bring those back tomorrow.

The Witness: Yes, sir.

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1567 *Direct Examination (Resumed).*

Mr. Kelaher: Your Honor, at this time I would like to offer Commission's Exhibits 331, 332, and 333 into evidence.

Hearing Examiner Kolb: Is there any objection?

Mr. Correa: No objection.

Hearing Examiner Kolb: The documents will be received in evidence as Commission's Exhibits 331, 332, and 333.

(Whereupon, the documents referred to, heretofore marked COMMISSION'S EXHIBITS 331, 332, and 333 for identification, were received in evidence.)

Mr. Thompson: The exhibits, of course, are taken subject to my objection and motion to strike?

Hearing Examiner Kolb: Subject to motion to strike by Atlantic.

By Mr. Kelaher:

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1624 Hearing Examiner Kolb: The hearing will be in order.

JOSEPH B. McMASTER was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination.

Hearing Examiner Kolb: Will you state your name for the record.

The Witness: Joseph B. McMaster.

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1676 Hearing Examiner Kolb: The hearing will be in order.

JAMES R. KELLY was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Please state your full name for the record, and your home address?

A. James R. Kelly, 1006 Overbrook Road, Baltimore 12.

Q. Mr. Kelly, did you at one time operate an
1677 Atlantic service station?

A. Yes, sir.

Q. Would you please state the location of your station?

A. 5103 York Road.

Q. In Baltimore?

A. Baltimore.

Q. And during what period did you operate the station?

A. I can't recall that exactly. About three years ago, roughly.

Q. Will it refresh your recollection if I said it was from about September 1952 to on or about March 26, 1953?

A. That sounds about right. It started in September.

Mr. Thompson: April 16, actually, Mr. Kelaher.

Mr. Kelahe: April 16, 1953.

Do you have the date when the lease commenced?

Mr. Thompson: September 27, 1952. And it was cancelled by mutual consent on April 16, 1953.

Mr. Kelahe: Thank you, Mr. Thompson.

By Mr. Kelahe:

Q. Mr. Kelly, when did you first become interested in being an Atlantic dealer?

A. As I recall it, they had a business opportunity ad in the paper, it was like an ad, anyone who was interested in a business opportunity. So I went down to apply for it.

Q. This was Atlantic that had the ad?

1678 A. Yes.

Q. Do you recall what the ad said, generally speaking?

A. No, I don't.

Q. Did the ad make any reference to finances or whether or not you needed money or capital or anything of that nature?

A. I don't recall that. When I was down there at the interview they told me.

Q. Then in answer to the ad you were interviewed by someone, is that right? Atlantic?

A. Yes.

Q. Who interviewed you at Atlantic, if you know?

A. I am trying to think of his name. I don't know right off-hand.

Q. But they were Atlantic representatives?

A. He was district manager or something like that. District sales manager or something like that.

Q. What were you told during the course of that interview?

A. First at the interview I wasn't accepted for the

job until I put up an argument—I mean a little talk. They wanted somebody who didn't have any experience at all, and I wanted to get a business of my own so I argued with the man. I already had seven or eight years experience and I wanted to have a chance or opportunity, so I tried to show him my point of view. So in a day or so they called me back and told me I was accepted to go to school.

1679 Q. Did you say you had seven or eight years experience? Do you mean as a service station attendant?

A. Attendant and operator.

Q. Then you were accepted? After that what transpired? Were you sent to school?

A. I think it was a couple of weeks or something like that. I had taken a physical. There was a whole bunch of fellows who applied for the job. There were about six of us, I believe about six of us, that passed to go to this school. Then we went to a large station out in Essex, I believe it was a three-month training period, in which we received training and they paid us while we were taking the training.

Q. What generally was taught at this dealer training school?

A. What generally what?

Q. Was taught? What was the purpose of the dealer training school?

A. It was to try to teach a man everything that he should know in how to operate his station, and how to be a service salesman on the front to sell your product, and courtesy, polite. Everything that you should know.

Q. During that period was any mention made of TBA by Atlantic representatives?

A. TBA, they tried to keep all their stations uniform, using Firestone products. So when people travel back

and forth they would have all their stations, they 1680 know all Atlantic stations sold Firestone.

Q. Was that told to you by Atlantic representatives at the training school?

A. I believe it was at the school. At the station, too.

Q. At the station too, later?

A. Yes.

Q. Approximately how many enrolled in the class you were in at the training school?

A. I believe it was only six of us there. There were a lot more applied for the job but there were only six of us that—there were six of us that went to school. Out of the six three of us came out.

Q. Do you have an idea of how many applied for the job originally?

A. Well, I don't know off-hand. I heard it was over a hundred.

Q. And of that number six went into the school and of the six three came—

A. Three of us come out.

Q. Three of you graduated?

A. Yes.

Q. Then what happened after you left the school?

A. After we left the school, it was a matter of a couple of days, I had a station.

Q. Up to that time was any mention made of any 1681 capital investment by you?

A. No. They had a list of what my assets were. They were nothing. So they more or less financed the whole thing for me and I paid it back on a gallonage basis, so much a gallon, on every gallon I sold. In turn, it pays back my loan. I actually made a loan from them.

Q. Do you recall the approximate amount of your loan?

A. I am not sure. I think it was somewhere around \$2800.

Q. And as part—

Mr. Thompson: If you want the precise amount I will stipulate it.

The Witness: I would like to know myself.

Mr. Thompson: \$2,670.03.

By Mr. Kelaher:

Q. Did you receive the loan in cash or in inventory?

A. No; in inventory.

Q. Inventory.

A. They filled all my gas tanks up, and put some tires, batteries, fanbelts, and oil and things I needed to start out and get myself started.

Q. And what brand of TBA was stocked in your station?

A. Firestone.

Q. Firestone?

A. Yes.

Q. Mr. Kelly, did you continue to handle Fire-1682 stone tires at your station?

A. Yes, I tried to keep on hand Firestone tires and stuff, as much as I could.

Q. Was there any time when you purchased other brands of tires?

A. Oh, yes. Other people wanted—I would give the people what they wanted to buy. It was their money. If they wanted Goodrich or U. S. Royal, I would go get it for them.

Q. You mentioned Goodrich. Did you purchase Goodrich tires for resale?

A. I believe once or twice. I don't remember.

Q. What window valances and advertising did you have in your service station?

A. I had Firestone up there.

Q. Was there ever—

A. I was going to change once, but in a roundabout way I was supposed to leave it up there to keep all the stations uniform.

Q. Would you please tell me, explain the latter part of your answer? Were you told this by an Atlantic representative?

A. It was one of the salesmen.

Q. What was his name?

A. Grady Law, I think was his name.

Mr. Thompson: May I have what Mr. Law told him? I didn't understand.

1683 By Mr. Kelaher:

Q. Would you please state what Mr. Law told you?

A. I don't remember too well offhand. All I remember is that he sort of said something that I should leave them up there to keep the stations uniform, and somebody might not like it if I took them down to change them.

Q. Did you take down the Firestone signs anyway?

A. No, because I listened to his advice to leave them up.

Q. Did you purchase any other brands of tires besides Firestone and Goodrich?

A. No, I don't believe so. Goodrich and Firestone.

Q. Did you purchase any Goodyear tires?

A. Yes, Goodyear, that is what I was trying to think of. Just a couple of Goodyears. I don't remember when it was.

Q. Where did you generally display your Goodyear and Goodrich tires?

A. I didn't display them.

Q. Where did you keep them?

A. If I had any, I don't know; I generally keep them in the car. I kept them in the back room.

Q. Why did you keep them in the car or keep them in the back room?

A. They said they wanted to keep all their stations uniform, and I couldn't take the decals down, so I figured I would wind up in trouble and kept them in the back 1684 room and in the car. I gathered I couldn't take them down. So rather than cause me any trouble while I was there I just kept them hidden.

Q. What brand of batteries did you purchase?

A. Firestone.

Q. Did you purchase any other brands?

A. I purchased Bowers batteries. I got fast service out of them. It was a cheaper battery and some of the people in the neighborhood just didn't want an expensive battery.

Q. Was your service on Bowers batteries better than on Firestone batteries?

A. I don't know about that. I got faster delivery service. The least little thing went wrong, they just asked no questions, they just handed me a new battery. You could buy a new battery from them for \$7 or something. People liked that.

Q. And your price was less on the Bowers battery than on the Firestone battery?

A. The price was much less.

Q. From whom did you purchase your accessories?

A. I purchased—what accessories are you referring to?

Q. I am referring to what are known as automotive accessories, oil filters, spark plugs, fanbelts, things of that type?

A. You mentioned fanbelts. I got most of my fanbelts, all my oil filters, most of my tires and batteries from Firestone. Everything else I bought from everybody.
1685 They say split your business around, it is good for you.

Q. Did you honor Atlantic credit cards in your station?

A. Oh, yes.

Mr. Kelaher: Your Honor, I think he has a right to testify as to his practice, to the operation of his station with respect to credit cards.

Hearing Examiner Kolb: You can ask him whether or not he sold items other than what was specified on the card.

Mr. Thompson: If your Honor please, the credit charge has no limitation; the Atlantic card. That is in the record.

Mr. Kelaher: I don't think all the Atlantic cards in the record show that, Mr. Thompson.

Mr. Ballard: This year it does.

Mr. Thompson: At least they will speak for themselves.

Mr. Kelaher: I am quite sure they don't.

1686 By Mr. Kelaher:

Q. Did you ever sell Goodrich tires on a credit card?

A. No.

Q. Did you ever sell—

A. Couldn't do that.

Q. You couldn't do that?

A. No. When I sold tires I would just list "two tires", the size and the amount of money.

Q. And if they were Firestone tires what would you list?

A. I would still list two tires and the size.

Mr. Thompson: The same way as Goodrich? Is that what I understood you to say?

The Witness: The same way with polish.

By Mr. Kelaher:

Q. You stated a minute ago you couldn't do that?

A. What is that?

Q. When I asked you if you sold Goodrich tires on Atlantic credit cards. You said you couldn't do that. What did you mean by that?

A. I can't specify B. F. Goodrich tires.

Q. You can't specify B. F. Goodrich tires.

A. As far as I know, I can't.

Q. Do you mean by that that you are only supposed to charge Firestone TBA?

A. I could put down two tires, if I want. Nobody 1687 knows what kind of tires they are. It is like accessories. Instead of putting down two cans of Firestone polish, I just put down two cans of polish.

Q. Whether it was Firestone or not?

A. That is right.

Q. What was your reason for doing that?

A. I guess the same as everything else.

Q. It has been stipulated that you left the station on or about April 16, 1953. What was your reason for leaving the station?

A. Well, it wasn't going so good and bookkeeping wasn't so good, either. I think that is why I failed, because of the bookkeeping system. I tried doing it the way they taught us at school, but we only had two days out there. And the salesman, he went along and tried to help me and kept me straightened out but he couldn't be there every day to check me in and out. So days he wasn't there I fell behind. Different ones kept urging me to keep on trying, to take time out and fill out. I said I would rather get a bookkeeper and get it over with. That is his job and let him do it for me. To get a bookkeeper would only cost me \$20 a month to start with and I would rather be out front selling instead of messing with books. I don't like figures anyhow.

Q. Did you at any time get a bookkeeper?

A. I eventually did get a bookkeeper there. It took 1688 about a month and a half to get me all straightened out.

Q. Did Atlantic representatives ever make any remarks to you with respect to your obtaining a bookkeeper?

A. They thought it was easy enough for me to keep myself. But I couldn't see it. I just couldn't keep everything down.

Q. Did an Atlantic salesman ever assist you with keeping your records?

A. Whenever he could, now and then. But it wasn't enough, to me. He has more than one station to take care of.

Q. Did you invest any money in a sales promotion program?

A. Yes. Just before I decided to give it up I had a few hundred dollars left and I asked the district sales manager to put on a sales promotion and see if it wouldn't help bring up my business for me. So it didn't bring it up. So I asked to leave.

Q. That is when you asked to leave?

A. I asked them to find me a new dealer, to find a new dealer because I would like to leave. I was so far in the hole it would take me forever to get out.

Q. When you took over the station, Mr. Kelly, was there any non-sponsored TBA in the outgoing dealer's stock? Do you recall that?

A. What do you mean? Other than Firestone?

Q. Other than Firestone?

A. There was Firestone there. There was DuPont 1689 radiator cleaner and polish, and stuff like that; popular brands.

Q. Did the Atlantic representative make any remarks to you concerning the non-sponsored stock?

Mr. Thompson: By an Atlantic representative? Did you say no?

Mr. Kelaher: He hasn't answered yet.

Mr. Thompson: I would like the Atlantic representative identified, please.

By Mr. Kelaher:

Q. Was there an Atlantic representative at the station when you took over?

A. Yes. They were taking inventory when I first took the station over.

Q. Do you recall his name?

A. I don't recall. The salesman of that territory was there.

Q. Who was he?

A. That was Grady, wasn't it? Grady Law?

Q. Was any statement made with him regarding the non-sponsored TBA?

A. Not by him, but the other man was there, he said was there any stuff I didn't want I didn't have to buy it.

Q. Did he say anything about the Firestone TBA?

A. He said he would like me to take all the Firestone stuff, gas, oil and equipment. The man I took the 1690 station off was bad off. He was sick. So I took everything I possibly could in order to help him out. He was right bad off.

Q. You stated during your examination you had an Atlantic loan of approximately \$2,670. Do you still owe money on that indebtedness?

A. Yes.

Q. Are you making payments on it now?

A. I tried to for awhile. For a long time I couldn't make any money. I have just started back up again. I wrote Mr. Leopold a letter here about a month ago. I sent him a check last month and told him I would send him a check the first of every month as much as I could possibly afford, I was on my feet now and I could afford to send some money.

Q. Who is Mr. Leopold?

A. I don't know exactly his title. He has something to do with the credit manager.

Q. For Atlantic?

A. For Atlantic. In South Carolina, or North Carolina.

Mr. Kelaher: No further questions.

Mr. Correa: If your Honor please, I move to strike the testimony as to the respondent Goodyear.

Hearing Examiner Kolb: The motion will be overruled. The testimony will be received subject to a motion to strike.

Mr. Thompson: Mr. Examiner, I have no questions.

1691 Hearing Examiner Kolb: Thank you, Mr. Kelly.

(Witness excused.)

1692 OSTER NORRIS was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Oster Norris, 1922 South Road, Baltimore 9, Maryland.

Q. Are you associated with the business of R. W. Norris and Sons, Inc.?

A. That is correct.

Q. And what is your position with that company?

A. Treasurer, Sales manager, and vice president.

Q. Vice president?

A. Yes.

Q. What is the business address of R. W. Norris and Sons?

A. 342 North Gay Street, Baltimore 3.

Q. How long have you been associated with the Norris Company?

A. Thirty-five years.

Q. Would you please describe the nature of your company's business?

A. We are in the automotive wholesale parts and supply business.

Q. Do you sell any other products?

1693 A. Well, we sell allied products such as rims and wheels, which are allied to the automotive industries. Also upholstery supplies for the same industry.

Q. Will you please describe the present sales area of your company?

A. Presently it covers the state of Maryland, District of Columbia, a small portion of West Virginia, a small portion of Virginia, and a small portion of Pennsylvania.

Q. Going back to in or about 1947, will you state the sales territory of your company, and whether or not you had any branches at that time?

A. It covered the same states, only it was more intensively covered, and the states of Virginia, Pennsylvania, and Delaware were incorporated at that time on a larger scale.

At that time, in 1946, and for a few years following that, we operated nine other stores than our main office. They were in Oxford and York, Pennsylvania; Dover, Delaware; Salisbury, Maryland; Fredericksburg, Virginia; Harrisonburg, Virginia; Winchester, Virginia, and Cumberland, Maryland. I believe that is nine.

Q. Since 1946 or 1947 have you closed any of such branches and, if so, approximately when, by year?

A. Well, between the years of 1948 and 1952 we closed our stores in Fredericksburg, Harrisonburg, Dover, Oxford, Pennsylvania, and Hagerstown. I think I omitted Hagerstown before.

Q. Since that time have any been closed?

1694 A. Since that time we have closed our Salisbury, Maryland, branch.

Q. In what year, approximately?

A. In 1954. Our York branch in 1953. And our Winchester branch in 1955.

Q. At the present time how many branches do you operate?

A. One branch. That is in Cumberland, Maryland.

Q. What so-called TBA items are carried by your company? What brands?

A. All nationally-known brands, such as Fram oil filter line, Gates fan belt line, tires and tubes, everything that can be used in the automotive business, really. Delco batteries.

Q. What brand spark plugs?

A. Autolite spark plugs.

Q. What brand of chemicals?

A. DuPont and others.

Q. Does your company also sell what are referred to as "hard parts"?

A. Yes, they do.

Q. What class of customers are solicited by your company?

A. Gasoline service stations, commercial or fleet accounts, car dealers are the main customers.

Q. How many salesmen are employed in the sale of TBA items, approximately?

1695 A. They would run between twelve and fifteen. That will vary.

Q. How are such salesmen compensated?

A. By commission.

Q. How many delivery trucks do you operate?

A. I would say eight.

Q. Is that in your main office?

A. Yes.

Q. Do you have any trucks in your—

A. We have one truck in Cumberland.

Q. How many salesmen are at Cumberland?

A. Two.

Q. Two of the total number you mentioned?

A. That's right. We have other men that do sell, but we don't consider them in the category of salesmen, of course.

Q. Mr. Norris, are there other sellers of TBA items in the marketing area in which you operate?

1696 A. Oh, yes.

Q. Could you give us the names of some of those, please?

A. The R. J. Loock Company, Baltimore Gas Light Company, Replacement Parts Company, Service Parts Company, Monarch Products, Salvo Auto Parts, and I guess there would be sixty additional.

Q. Does your firm operate in areas where Brooks-Huff Tire Company operates?

A. Yes, sir.

Q. And Firestone Stores?

A. Very definitely.

Q. And Stuart-Pressley Company?

A. Yes.

Q. And Goodyear service stores and district stores?

A. Yes, sir.

Q. How do your products compare as to price with these other sellers of TBA in your trading area?

A. I would say they are competitive in every respect, price, quality, both.

Q. "Price, quality—" what?

A. Both as to price and quality.

Q. How does your service compare?

A. We think it is every bit as good as any competitor we have.

Q. In both your former and your present marketing area, were there Shell, Atlantic, and Sinclair service stations?

A. Yes.

Q. You have testified that you closed—was it nine branches?

A. We closed eight.

Q. You have closed eight?

A. The ninth one is open.

Q. You have closed eight branches since 19—

A. Since 1948.

Q. Has this resulted in an increase or decline in your sales of TBA to the service station market?

A. Very definitely a decline.

Q. Do you have an approximation of the percentage of decline?

A. In TBA products?

Q. In TBA products to the service stations.

A. I would say approximately around thirty percent.

1698 Q. Has there been since about 1948 an increase or decrease, or has the volume remained the same, with respect to the sale of TBA to Shell and Sinclair service stations in your marketing area?

A. A decrease.

Q. And has that decrease been substantial?

A. We think so, yes, sir.

Mr. Kelaher: No further questions, your Honor.

Mr. Mason: No questions.

Mr. Ballard: Your Honor, I assume that all the testimony pertaining to Shell and Sinclair is received subject to a motion to strike?

Hearing Examiner Kolb: It is subject to a motion to strike by Atlantic.

You may be excused.

(Witness excused.)

Mr. Kelaher: We have one more witness who has traveled quite a distance. We would like to put him on.

1699 JOHN J. MIGAN was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. John J. Migan, Randallstown, Maryland. I live at Church and MacDonald Road.

Q. Mr. Migan, are you an employee of the R. W. Norris and Sons Company?

A. Yes, sir.

Q. How long have you been associated with that firm?

A. It will be twenty-eight and a half years.

Q. What is your capacity with that firm?

A. I represent them as a salesmen on the road.

Q. Are you what is known as an outside salesman?

A. That's right.

Q. Have you been an outside salesman for some time?

A. Just about twenty years.

Q. What is your sales area?

A. I cover practically all of Baltimore County, part of Howard, part of Carroll, and part of Anne Arundel, and part of Prince Georges County.

Q. Are there any Atlantic service stations in your 1700 marketing area?

A. Oh, yes. Quite a few.

Q. Do you know approximately how many?

A. That I call or that I pass by?

Q. That you pass by.

A. I guess 25 or 30.

Q. Of this number how many are solicited by you?

A. I suppose five or six.

Q. Do you sell tires to any of these service stations?

A. I do not.

Q. Do you sell batteries to any of these service stations?

A. No, I do not now.

Q. Did you at one time?

A. An independent station. I have sold him batteries at one time.

Mr. Ballard: I move to strike that answer unless the name of the dealer is specified.

By Mr. Kelaher:

Q. Would you please specify the name of the dealer?

A. The name of the dealer is Klohr Service Station at Randallstown.

Q. How many of these so-called independent Atlantic stations are in your territory, or do you solicit, I should say?

A. Two, that I can recall right now. There are 1701 quite a few in my territory.

Q. And the other stations you term company-owned stations?

A. Company-owned stations. I call on a few, maybe five or six company-owned stations.

Q. With respect to the Company-owned stations, do you sell tires?

A. No, I do not.

Q. Batteries?

A. A little bit I can sell them, yes.

Q. Do you sell batteries?

A. We sell batteries, but I can not sell to Atlantic stations.

Q. That is what I meant. Do you sell accessories to Atlantic stations?

A. Very few. It has to be something special that we would carry that they probably couldn't get from the company.

Q. Do you stock any of your lines in Atlantic stations?

A. Very few, if any.

Q. What brand of TBA is carried in Atlantic stations in your territory, if you know, by your observation?

A. Batteries.

1702 By Mr. Kelaher:

Q. Although you have testified to it, will you state what brand of TBA is predominantly carried by Atlantic service stations?

1703 A. Firestone.

Q. What service station identification appears on the Atlantic service stations? I mean by window valance and outdoor signs with respect to TBA.

A. Practically all you can see is Firestone, unless he is an independent dealer, naturally he will have some other type of sign.

Mr. Ballard: I move to strike, your Honor.

Hearing Examiner Kolb: Motion to strike denied.

By Mr. Kelaher:

1718 By Mr. Ballard:

Q. Mr. Migan, my name is Ballard and I represent the Atlantic Refining Company.

Let me first ask you, how many accounts do you have all told that you call on?

A. That I call on?

Q. Yes.

A. I think on my list I have about 185.

Q. About how often do you get around to see them?

A. Some of them every two, some three, some every four weeks.

Q. One of those accounts is a gentleman named Pollard that runs an Atlantic station?

A. That is right.

Q. York and Joppa Roads?

A. Yes, sir.

Q. He has been there a long time?

A. Yes, sir; a long time.

Q. He buys tire chains from you?

1719 A. Yes, sir.

Q. And Zerone and Zerex?

A. Yes, sir.

Q. I don't think he gets his Gates hose from you, or does he?

A. No. He used to buy belts from me but he doesn't.

Q. He doesn't anymore?

A. We changed our lines and we don't have his line.

Q. What does he have today?

A. He has Dayton today, and we went to Gates.

Q. He gets those Dayton belts from the Boyd Company? Is that where he gets them?

A. I don't know where he gets them. We used to sell him. I put in his original stock and I kept him supplied until just when we took on Gates about two years ago.

Q. That is a company-owned station, of course?

A. I understand it is.

Q. Is Joppa—yes, here is another one on Joppa and York Roads, Albert Schilling. Is that the same station?

A. I wouldn't think so.

Q. You don't know Alvin Schilling?

A. No.

Q. Going back to Pollard, he has a sign on those Dayton belts, doesn't he?

A. Oh, yes.

1720 Q. Displays them?

A. Yes.

Q. Stocks them?

A. Yes, he does that.

Q. Is Howard Triplett one of your customers?

A. Yes.

Q. He is an Atlantic station?

A. Atlantic station, yes.

Q. That is a company-owned station?

A. Yes, I understand so.

Q. Do you sell him Zerone and Zerex?

A. Yes, I do.

Q. Does he get his Champion spark plugs from you?

A. No.

Q. He gets those from Rogerstown Oil Supply?

A. I could not tell you, sir.

Q. He does have them, though?

A. I couldn't tell you that. We don't carry Champion plugs.

Q. You don't carry Champion?

A. No.

1721 Q. You don't know what plugs he carries?

A. No. I have never questioned him on his plugs. I did try to get some of his ignition business but I don't seem to be able to get that, although I don't think that has anything to do with his TBA.

Q. That is hard parts. Is that what you call hard parts, the ignition business?

A. I wouldn't know whether you call it hard or not.

Q. It is not TBA?

A. I wouldn't consider that part of the TBA, no.

Q. Do you call on Wineger and Vanador? Do you know that station?

A. No, I do not.

Q. A very big Atlantic station?

A. No, I don't know it. I have one at Timonium.

Q. What is the name of it?

A. Timonium/Atlantic.

Q. Do they buy from you?

A. He buys a few items.

Q. Mr. Migan, are you the only supplier of Delco batteries in the city?

A. I wish we were.

Q. There are a number of others, is that right?

A. Indeed there are.

Q. What other suppliers handle Delco?

1722 A. Well, Parks and Hull. It is on Cathedral Street. Service parts company; and R. H. Boyd, I believe that is right.

I can't think of them that fast but there are quite a few of them. F and L Auto Supply; Salvo; I think Mazor Brothers. I just don't know them all. I have been in the meeting when they were all in one group but I can't recall who they were. I know there are quite a few of them.

Q. Do you know any Atlantic stations that carry Delco that don't buy from you?

A. No, I do not. I used to sell Klohr, at Randallstown, but he has gone over to Lee now. I don't sell him.

Hearing Examiner Kolb: Is that all?

Mr. Ballard: That is all.

Hearing Examiner Kolb: Do you have any questions?

Mr. Kelaher: Just a few.

Redirect Examination by Mr. Kelaher.

1724 By Mr. Kelaher:

Q. With respect to the Pollard Station, did you sell tires or batteries to the Pollard Station?

A. No, I did not.

Q. And accessories, what was your experience on accessories?

A. I do very little with Jack on accessories.

Q. And what identification does Mr. Pollard carry on his station?

A. I think most anybody could put up a sign there. Jack is not particular on any part.

1725 You can't compare that with other, I would say, legitimate stations, that is all. Not that he is not legitimate himself, but to operate.

Q. Is there a Firestone sign on the premises?

A. There may be. I don't recall one being there, if there is.

Mr. Kellaher: No further questions.

Mr. Ballard: I don't think I have any further questions.

Mr. Mason: No further questions, your Honor.

Hearing Examiner Kolb: That is all. Thank you very much for coming down.

1727 Hearing Examiner Kolb: Come to order, please.

EUGENE SAVAGE was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kellaher.

Q. Please state your name and home address.

A. Eugene Savage, 4301 Fairview Avenue, Baltimore, Maryland.

Q. Mr. Savage, are you associated with the Burke-Savage Tire Company, Inc.?

A. I am.

Q. What is your position with that company?

A. I am an outside salesman and I am the treasurer of the firm.

Q. How long have you been with Burke-Savage?

A. I have been with Burge-Savage twelve years.

Q. How long have you been an outside salesman with that firm?

A. About nine years.

Q. That would put it back to about 1948, is that right?

A. Approximately.

Q. Will you please describe your company's business?

A. We are basically wholesalers. We go after the service station and garage business. We also carry retail
1728 and commercial business.

Q. What products do you carry?

A. We carry two major brands. We carry the U. S. Royal line and we also carry the Armstrong tire line.

Q. Do you carry batteries?

A. We also carry batteries. U. S. Royal batteries.

Q. Do you carry accessories?

A. Not now, No. We dropped the complete accessories line.

Q. At one time did you carry a line of accessories?

A. Yes, we did.

Q. What brands and what products primarily?

Mr. Correa: Could we have a date fixed, please?

The Witness: When we carried the accessories?

Mr. Correa: When you dropped the accessories.

By Mr. Kelaher:

Q. We will develop that if you will just let me work this out. I think we will get right along.

Mr. Correa: Is there a mystery about it, Counsel?

Mr. Kelaher: He can't answer more than one question at a time.

By Mr. Kelaher:

Q. Go ahead.

A. What was the question?

(Question read.)

A. We carried U. S. Royal accessories. We carried the U. S. Royal fan belts; we carried the AC spark plugs; we carried the complete line of Whiz, which is a Hollingshead product, chemical line.

Q. During what period did you carry such products?

A. We were carrying the line when I came with the firm. We were carrying these accessories lines. I would say that we were carrying the lines up until about six years ago.

Q. And after that time did you continue to carry any accessories at all?

A. We slowly went out of the accessories business and today we have nothing.

Q. Mr. Savage, how many salesmen does your firm employ?

A. Twelve salesmen.

Q. How are they compensated?

A. Do you mean today how many we employ?

Q. Today, yes.

A. Today we have eight salesmen.

Q. And at one time did you employ more salesmen?

A. Yes. When I went with the firm we had 12 salesmen.

Q. How are these salesmen compensated?

A. We pay our men a weekly salary. We pay them commissions on their sales. We also pay them a bonus at the end of the year.

Q. How many trucks does your firm operate?

A. We operate eight trucks.

1730 Q. What is the sales area of the company?

A. We cover the complete Baltimore area and sort of the outlying sections. I would say we cover say within a thirty-mile radius.

Q. Of Baltimore?

A. Of Baltimore.

Q. Are you a large wholesaler of U. S. Tires in this area?

A. I would say we are the largest tire wholesaler in the Baltimore area.

Mr. Correa: If your Honor please, I think I shall have to move to strike that answer as unresponsive because it leaves the question unclear. Counsel asked the question, is the witness' firm a large wholesaler of U. S. tires and the witness replied by saying we are the largest tire wholesaler. Whether he means tires in general or U. S. tires is left obscure by the unresponsiveness.

The Witness: I would say we are the largest U. S. wholesalers.

Mr. Correa: That solves the problem.

By Mr. Kelaher:

Q. Who are some of the other sellers of tires in your sales area, large sellers?

A. Who are some of the other sellers of U. S. tires, or of other tires?

Q. Of other tires?

1731 A. Well, Brooks-Huff is in our area selling tires; Stuart-Pressley—

Q. Which brand?

A. Brooks-Huff carries the Goodyear tires.

Q. Did you mention Pressley?

A. Pressley also carries the Goodyear line. Also, of course the Goodyear store itself sells tires to dealers.

Q. Are there Firestone stores in Baltimore?

A. There are two Firestone stores that sell tires.

Q. And are there other sellers—who are the principal sellers of batteries in your sales area who sell other than U. S. batteries?

A. These batteries are also sold by the same suppliers.

Brooks-Huff carries the Goodyear battery and so does Pressley carry Goodyear. And of course the Goodyear store also of course carries Goodyear batteries.

Q. What type of delivery service do you furnish to your customers?

A. We pride ourselves on the same day delivery service. We give our dealers when they call up, we give them the service the same day. In fact, it is not uncommon for us to make deliveries within two hours or so after they call.

Q. And do you know whether Brooks-Huff has similar delivery service?

A. To my knowledge, in talking to these dealers, 1732 they all tell me that Brooks-Huff uses a two-day delivery service. They tell them two-day delivery in that area, and and they only get deliveries on those two days.

Q. Do you mean by that that they will specify two days in the week?

A. That is right. In East Baltimore, for instance, they may tell the dealer he can get deliveries on Mondays and Thursdays. And that is the only two days he can call in and get deliveries.

Q. Approximately how many Sinclair stations are in your sales territory?

Mr. Correa: That is objected to, if your Honor please. This witness has testified that he does not presently and has not for some years sold accessories. As your Honor will recall, the only product in the TBA line covered under any sales commission plan existing between Goodyear and Sinclair at the time of the issuance of the complaint herein is accessories. And since the witness does not handle accessories, at least at any time since the complaint herein was filed, I submit that the question and the line of evi-

dence to which it points can have no possible relevance to any issue arising under this complaint in this proceeding.

Hearing Examiner Kolb: In view of the controversy with reference to accessories and so forth, I will receive this evidence, subject to a motion to strike after we get the whole matter straightened out.

1733 Mr. Kelaher: I will withdraw that question and ask him another question.

By Mr. Kelaher:

Q. You stated that you have been an outside salesman from approximately 1948 to date with your company, is that correct?

A. That is correct.

1752 Q. Approximately, how many Atlantic stations are in your sales territory? And I might say, as I understand it, the Firestone-Atlantic TBA sales commission plan is still in effect in this area.

Mr. Thompson: When you say Atlantic, I presume you mean Sherwood.

Mr. Kelaher: I mean Atlantic.

Mr. Correa: I know nothing about the Firestone-Atlantic sales commission plan and concede nothing with respect to it.

Also, if your Honor please, if counsel is going into Atlantic, I take it the testimony may be received subject to my motion to strike.

Hearing Examiner Kolb: Subject to a motion to strike by Goodyear.

Mr. Thompson: I move at this time to strike all the testimony relating to Sherwood and Sinclair.

Hearing Examiner Kolb: The motion will be denied. The testimony will be received subject to a motion to strike by Atlantic.

By Mr. Kelaher:

Q. Approximately, how many Atlantic stations are in your sales territory?

A. I would say approximately 30.

1753 Q. And during the period, you have been an outside salesman, that is, from 1948 on, have you solicited the business of Atlantic service stations?

A. I have solicited approximately 75 percent of them.

Q. You did or you now do?

A. I solicit them. I am definitely not selling any.

Q. When you first started soliciting business from Atlantic service station, what brand of tires did you notice predominantly in those stations?

A. Lee tires.

Q. What tires do you now notice predominantly in Atlantic stations?

A. I would say it is predominantly Firestone now.

Q. And about—

A. Almost exclusively Firestone in these Atlantic stations.

Q. When did you notice the change from Lee to Firestone?

A. I don't have an exact date.

Q. I will withdraw that question.

A. It was hard to say because there was a conversion period there. It wasn't an overnight situation.

Q. But presently, today, do you find Firestone tires?

A. Yes.

Q. What type of identification do you find in Atlantic stations?

A. The tire identification is almost exclusively
1754 Firestone identification in Atlantic stations.

Q. What type of window valances and outdoor signs do you see?

A. Also Firestone.

Q. Have you attempted to place U. S. Royal or Armstrong advertising in Atlantic station?

A. Yes, I have. I have also tried to put up U. S. decals and U. S. Royal metal signs and other advertising materials, and the service stations would not allow me.

By Mr. Kelaher:

1755 Q. Have you lost the business of any Atlantic service stations since you have been an outside salesman?

A. Yes, I have.

Q. Do you recall the names of any such dealers?

A. Yes. I called on a station at Fallsway and Center, Leonard's Atlantic Station. At one time previous to 1953 he carried all U. S. Royal tires. He carried a complete stock of U. S. Royal tires. And today I do not call on this station because he now handles Firestone tires.

Q. Did you have any conversations with Mr. Leonard concerning his purchase of tires from you?

A. Yes, I did.

Q. When was the approximate time, and what was the substance of the conversation?

A. I would say it was approximately 1954, and at that time he told me that he is going to handle Firestone tires because the oil company has a tie-in with them.

Mr. Thompson: Has what?

The Witness: A tie-in with them.

Mr. Thompson: Because what has?

The Witness: Because the oil company has a tie-in with them. That was his conversation.

1756 By Mr. Kelaher:

Q. Do you recall the names of any other Atlantic dealers with whom you had conversations concerning their purchase of U. S. tires?

A. Yes. There is a service station now in business at Edmondson Avenue and Swan. A Mr. Varnadone—V-a-r-n-a-d-o-n-e—he has a partner.

At one time Mr. Varnadone, in another station, carried exclusive Burke-Savage products. He does not stock anything but Firestone tires today.

Q. You stated at "another station." Is it another Atlantic stations you are referring to?

A. Yes. He had an Atlantic station, that's right. He owned his own station previous to this station that he now has. When he owned his own station he carried Burke-Savage products exclusively. Now that he leases a station he carries Firestone tires.

Q. Did you have a conversation with Mr. Varnadone?

A. Mr. Varnadone told me exactly that when he owned his own station he was at liberty to carry what he wanted to carry. But now that he leases his station he is forced into carrying Firestone products.

Q. When did this conversation take place?

A. Sometime in 1954.

Q. Do you have the names of any other former 1757 Atlantic customers of yours?

A. Yes. I called on Eckhardt Service Station on Fleet Street.

Q. In Baltimore?

A. In Baltimore, that's right.

Mr. Thompson: What is the name?

Mr. Kelaher: We can furnish the names, rather than break into the continuity of his testimony.

Mr. Thompson: I would like to have the spelling. I would like to have it now, rather than later.

How is it spelled?

The Witness: E-c-k-h-a-r-d-t. I believe his first name was "Tommy" Eckhardt.

By Mr. Kelaher:

Q. When did you first call on Mr. Eckhardt?

A. I started calling on him approximately 1951. I sold him tires up until approximately 1954. At that time he told me he could only carry the Firestone tires.

I believe—I stopped calling on him when he naturally couldn't purchase any more tires from Burke-Savage. I believe that he is no longer with that station.

Q. Was he at one time a stocking customer, a regular stocking customer of Burke-Savage?

A. Yes, he was.

Q. Who is the principal supplier of Firestone tires 1758 to Atlantic stations?

A. I would say the Firestone Company stores are the principal suppliers.

Q. How do the prices of Burke-Savage compare with the tire prices of the Firestone Stores, and the battery prices?

A. In most cases, I would say that we gave a larger and better discounts to dealers.

Q. How did your service compare with the service of Firestone?

A. We still prided ourselves on same-day delivery, and the oil company used the two-day delivery service.

1765 Q. During the period 1948 on, did your sales of accessories to Atlantic service stations increase, decrease, or remain the same?

Mr. Thompson: May I have the question read?

(The reporter read the question.)

Mr. Thompson: I have no objection to that question. Of course, it already appears of record that Atlantic was not on the sales commission plan in those years, so I don't see any possible relevance. But it might be an interesting academic fact.

Mr. Kelaher: They went on the sales commission plan in 1951, as I recall.

Mr. Thompson: Not in 1948, which is what your 1766 question is.

Mr. Kelaher: I am taking him up to date.

Mr. Thompson: This fellow dropped accessories, he said, in 1951, the same year that Atlantic went on—

Hearing Examiner Kolb: If there is no objection to the question, let the witness answer.

Go ahead. . .

The Witness: Over that period of years our accessories decreased. Accessories sales decreased.

By Mr. Kelaher:

Q. During the year—

Mr. Thompson: The date you are talking about is 1948 and thereafter?

The Witness: That's right.

By Mr. Kelaher:

Q. Were you soliciting accessories business in 1951 from Atlantic service stations?

A. I was.

Q. And what has been your experience in the sale of accessories to Atlantic service stations beginning in 1951?

A. I would say that the greatest decrease started in 1951.

1768 By Mr. Kelaher:

Q. Mr. Savage, I would like to have you state more specifically how long your company carried accessories products?

A. As I said, the company was handling accessories—we have been in the business close to forty years, and the company was handling accessories when I went with the

firm. In 1951 our accessories business started to drop off very badly, and over a period of a few short years we finally went out of the complete accessories line.

Q. In 1951 you still had a stock of accessories?

A. That's right.

Q. And you were soliciting—

A. We were still soliciting from our stock, but our sales had dropped off so badly because it was so tough to sell oil company leased service stations, that we eventually stopped buying accessories.

Q. After you stopped buying, you still had a stock on hand?

A. We still carried a stock, yes.

Q. You still solicited accessories business?

1769 A. We solicited from our stock.

Q. Until your stock was exhausted?

A. That's right.

Q. How long a period did it take to exhaust your stock?

A. Approximately two years.

Mr. Kelaher: No further questions, your Honor.

Mr. Correa: May we have a short recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

*1770 Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Correa.

Q. I take it, sir, that you understood your assignment here this morning to be to testify against certain tire companies and certain oil companies, including—

Mr. Kelaher: Objection.

Mr. Correa: May I finish?

Mr. Kelaher: Yes, and I will object.

By Mr. Correa:

Q. (Continuing.) —including among the tire companies my client Goodyear, is that right?

Mr. Kelaher: I object to the form of the question.

Hearing Examiner Kolb: Objection overruled.

A. My only understanding was to come here today to tell the truth about our business.

By Mr. Correa:

Q. And you were telling the truth when counsel asked you who your competitors were—

A. That is right.

Q. (Continuing.) —in the sale of tires to service station dealers and others? And you mentioned Brooks-Huff, a Goodyear dealer?

A. That is right.

Q. Pressley, a Goodyear dealer?

1771 A. That is right.

Q. A Goodyear store and the Firestone store?

A. That is right.

Q. Did you mean to imply that you have no other competitors in the sale of tires in this area?

A. No, I didn't.

Q. You have a great many others, do you not?

Mr. Kelaher: Let him answer.

Mr. Correa: He answered. He said "I didn't."

Mr. Kelaher: He hadn't completed his answer.

Hearing Examiner Kolb: Stop this controversy. Answer the question.

By Mr. Correa:

Q. The pending question is that you have a great many others, do you not?

A. Through service stations, no, there aren't a great many other ones. A very few. He asked me for some of my prime competitors, and I gave him a list of some of

the prime competitors. There are several others, but not too many.

Q. Are Goodrich tires sold in your marketing area?

A. That is right.

Q. Who sells Goodrich tires?

A. There is a Goodrich store.

Q. Is the Goodrich store a competitor of yours?

A. That is right.

1772 Q. Are General tires sold in this marketing area?

A. Not in service stations, no. General is to my knowledge—I have never seen a General tire sold through service stations.

Q. Are Lee tires sold in this marketing area?

A. Very, very limited. Very limited in my customers that I call on, that I see about tires.

Q. Could you answer the question?

A. Are Lee tires sold in this area?

Q. In your marketing area?

A. Yes, Lee tires are sold. But in a small degree.

Q. You say that you had the same-day delivery—

A. That is right.

Q. (Continuing.) —in your company. And you said that Brooks-Huff has a two-day delivery?

A. That is right.

Q. Don't you know that the fact is that Brooks-Huff has the same-day delivery?

A. If they do, I have been in service stations when they have called Brooks-Huff on the phone, and actually heard conversations where they told them they couldn't deliver until certain days of the week.

Q. Don't you know it is a fact that Brooks-Huff currently maintains a truck to make deliveries in response to calls within a matter of hours?

A. You say currently. I don't like to cross-ex-
1773 amine you. Are you talking about—is that something new that he has just done in the last few months?

Q. I am asking you—no, it is not but I am asking you what is the situation now.

A. To my knowledge the situation is the same, because I have dealers calling me up very recently and telling me that they have actually called Brooks-Huff and couldn't get the merchandise right away, and they have called Burke-Savage because they knew they could get same-day delivery.

Q. You have said that you sold tires at a lower price than Brooks-Huff?

A. In most cases, yes.

Q. What tire were you referring to? U. S. Royal or Armstrong?

A. Both.

Q. Do you sell U. S. Royal and Armstrong at the same price?

A. Well, it is a pretty hard thing to—

Q. Don't you know whether you do or don't, Mr. Witness?

A. Yes, we do know.

Q. What is it?

A. Are you talking level for level?

Q. I am talking about the price that the dealer pays for the tire he buys.

A. We sell first line Armstrong tires at a lower price than we sell first line U. S. Royal tires. But we sell higher level tires in Armstrong at a better recovery than 1774 we sell premium U. S. tires. Does that answer your question?

Q. Do you sell U. S. batteries, also?

A. That is right.

1788 Q. Do you mount truck tires for dealers who buy them?

A. Do we? Yes, we do.

Q. Are you in the recapping business, also?

A. Yes, we are.

1789 Q. Do you do recapping with service station dealers?

A. Yes, we do.

Q. Who is your principal competitor in the recapping business in Baltimore?

A. Well, now, recapping is a different basis than new tires. We have many more competitors in recapping than we do in new tires through service stations.

Q. Could you please now—

A. Who is my principal competitor?

Q. Let's get down to my question.

A. Is that plural? Competitors?

Mr. Correa: Read the question, please, Mr. Reporter, and see if the witness can answer.

.(Question read.)

The Witness: Unless you can be more specific—is that in service stations, or commercial accounts? It is a pretty tough thing. In other words, there are several. Car dealers are you talking about or what?

By Mr. Correa:

Q. Let's say in service stations.

A. Who is my principal competitor?

Q. In recapping.

A. Suppose I have three competitors who are all selling the same amount. Who would be the principal one?

Q. Name the three if it is three and let's stop
1790 fencing if you please.

A. I am not trying to fence. If you would only have made it plural, I think I could have answered it.

Q. If it is three, name three, and if it is a dozen, name a dozen.

A. Brooks-Huff is a principal competitor of mine; C. D. Erdman is a principal competitor of mine and Frank Jacobs Tire Company is also a principal competitor of mine.

Q. How about Armor Tread?

A. Armor Tread is also a principal competitor. There are several. It is hard to name one.

Q. You spoke of handling accessories, Mr. Witness. Is that the U. S. line of accessories?

A. We handle quite a few U. S. line of accessories. We handle the U. S. fanbelt and we handle spark plugs that we purchase through United States Rubber Company, etc.

Q. Did U. S. Rubber Company cut down or eliminate its accessories lines in recent years?

A. Nationally? Are you talking of nationally or Baltimore?

Q. Nationally?

A. I have no real—I wouldn't be able to answer that. I don't know the United States Rubber Company's statistics or figures on accessories.

Q. You don't know whether they have cut down on their accessories line.

1791 A. I wouldn't know. I honestly couldn't answer that.

1797

Afternoon Session.

(1:40 P. M.)

Hearing Examiner Kolb: You may proceed.

Thereupon, EUGENE SAVAGE resumed the stand as a witness for the Commission and, previously having been duly sworn, was further examined and testified as follows:

Cross-Examination (Resumed) by Mr. Thompson.

Q. Mr. Savage, did I correctly understand you this morning to say that you had very few competitors in your sales territory?

A. Well, can you be more specific? Again I ask you, are you talking about service stations? And any particular type of service station?

Q. Let's confine the question primarily to service stations. Do you have very few competitors in your efforts to sell service stations?

A. That is right.

Q. Very few. Is the Norris Company one of your competitors?

A. Norris? Are you talking about tires, of course?

Q. I am not talking about tires, of course, at all.

A. As I stated before, we are out of the accessories business now.

1798 I would say that Norris is not a competitor of mine on tires.

Q. How about batteries?

A. In batteries, I would say they are a major competitor.

Q. When you were selling accessories for some years after you decided actively to drop the business but were

selling out of stock, was Norris one of your accessories competitors?

A. Yes, he was.

Q. You know the company, of course?

A. R. W. Norris, isn't it? Is that the one you are referring to?

Q. R. W. Norris.

A. Yes.

Q. Were you present yesterday when Mr. Norris testified?

A. No, I wasn't.

Mr. Kelaher: All witnesses had been excluded except one in response to Mr. Correa's request.

By Mr. Thompson:

Q. Would it refresh your recollection about the number of people engaged in the tire, battery, and accessories wholesale business in selling to service stations if I suggest to you that there are more than 60 such concerns based on the testimony of Mr. Norris?

A. Selling—

Q. Selling TBA to service stations.

1799 A. Are you talking primarily from any one service station, or are you getting into the category of Cities Service stations?

Q. I am talking about—

A. In other words, if I call on a Betholine service station, my only real competitor is Brooks-Huff. I don't see the Atlas supply house selling—

Q. If you call on an Atlas station, your only competitor is who?

A. Firestone. Not my only competitor but my major competitor. There are other tire companies that fringe into business but aren't large competitors.

Q. Who are your principal competitors in your efforts to sell Atlantic stations?

A. Firestone.

Q. Who else?

A. I would say they are the largest competitor there.
I would say Firestone.

Q. That is the only competitor you can think of in your efforts to sell service stations?

A. The only major competitor.

Q. Do you regard the Loock Company as one of your competitors?

A. In tires; no, sir.

Q. They don't make any efforts to sell tires to service stations, is that correct?

A. I wouldn't say that they don't make any effort.
1800 I don't even know what kind of tires they handle.

There are several types of tires that I have seen around, that I call off-brand tires, that are handled through some of these jobbers. I am not sure which type of tire Norris handles. They aren't that much of a competitor.

Q. Your sales territory is what I think you referred to as the greater Baltimore area?

A. That is right.

Q. Would that be roughly Baltimore and say a radius of roughly 20 miles or something like that?

A. Approximately.

Q. In that area you offer U. S. Royal tires and Armstrong tires, am I correct?

A. That is right.

Q. Aren't the Dunlop tires also sold in that area?

A. To a small degree.

Q. How about Fisk?

A. I see some Fisk tires but I wouldn't consider them a major competitor in the service stations that I mentioned.

Q. How about Gillette?

A. I see some Gillette.

Q. And you of course see a lot of Goodrich?

A. Goodrich is a major competitor, yes.

Q. And of course Goodyear is a major competitor?

A. And Goodyear, and also Firestone.

1801 Q. And Hood?

A. Very—I don't even remember seeing any Hood tires in any service stations.

Q. Kelly-Springfield?

A. In these stations, I haven't seen any Kelly's, either. I see some Kelly-Springfield in some Sunoco stations. If you would be more specific, for instance, when I call on, say, a Texaco station, I would say that my major competitor is Firestone and Goodrich. And that would constitute possibly 80 to 90 percent of competition I receive in that particular service station.

Q. Aren't there a number of wholesalers in the Baltimore, Greater Baltimore area, selling Lee tires?

A. Selling Lee tires?

Q. Yes.

A. The only one that I know is the company store itself. I don't know of any other large Lee dealers that sell service stations.

Q. You never heard of the Hillen Tire Company?

A. I have heard of the Hillen Tire Company. I know Mr. Schnitzer and most of his business is commercial business, not service station business. Mr. Joseph Schnitzer I saw a couple of weeks ago and told me it is so small it isn't even worth talking about.

Q. So they don't try to sell service stations?

A. No, they don't—

1802 Q. Do any of these companies that you mentioned make any efforts to sell service stations, outside of Firestone and Goodyear?

A. I would say they make some effort, yes.

Q. How about Mansfield? Isn't that a rather well-known name in Baltimore?

A. Again, I say I can't even remember seeing a Mansfield tire in any one of these service stations that I call on.

Q. Perhaps at a later point I shall have occasion to try to refresh your recollection. In the meantime, is the McCreery tire sold in the Greater Baltimore area?

A. In service stations?

Q. Yes.

A. Not to my knowledge.

Q. Never see it there?

A. Not in service stations.

Q. How about Michelin?

A. I have never seen a Michelin tire in any service station at any time in the last twelve years.

Q. How about the Miller tire? Is that a local tire sold in Baltimore?

A. I don't know if it is local or not. I believe there are some Miller tires sold in Baltimore. I know of one retailer that handles Miller tires. Again I have never seen a Miller tire in any service stations.

1803 Q. They don't try to sell service stations?

A. Not to my knowledge.

Q. How about Schenuit, is that a Baltimore company?

A. Schenuit is a Baltimore company. Schenuit is probably a little more prominent than all these other off-brands that you mentioned in service stations.

Q. Do you regard Lee as one of your off-brand tires to which you referred?

A. Well, it is terminology. Anything which is not original equipment I sort of refer to as "off brand" tires.

Q. What are the original equipment tires to which you refer?

A. U. S. Royal, Goodyear, Firestone, Goodrich, and General are original equipment tires.

Q. What do you mean by original equipment?

A. Original equipment are tires that are equipped on new automobiles.

Q. And therefore more readily sold as replacement tires?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Overruled.

The Witness: I can answer that. Armstrong is not an original equipment tire, and yet we—

By Mr. Thompson:

Q. Are the original equipment tires more easily salable as replacement tires?

Mr. Kelaher: He is trying to answer the question, 1804 I think.

Hearing Examiner Kolb: Read the question.

(Question read.)

A. I would say yes.

By Mr. Thompson:

Q. How about Seiberling line, isn't that sold around Baltimore?

A. Yes, it is.

Q. And you are not by any means the only U. S. Royal distributor, are you?

A. No. There is one other distributor.

Q. Who is that?

A. C. E. Kimmel.

Q. Do you regard Kimmel as one of your competitors?

A. Not through service stations.

Q. Not through service stations?

A. Not through service stations.

Q. Perhaps we will have a chance to refresh your recollection at a later point.

Are there not many, many brands of batteries sold to service stations in the Greater Baltimore area?

A. Are there many brands of batteries?

Q. Yes.

A. Yes, there are.

Q. Would twenty be a pretty good guess?

1805 A. I would say so.

Q. Mr. Savage, when you come to accessories—and I understand, of course, that you are now out of the accessories business—I also understood you to testify that after 1951 you spent several years disposing of stock, is that correct?

A. That is right.

Q. Are there not just innumerable brands of accessories which are sold to service stations by a very large number of wholesalers?

A. Well—

Mr. Kelaheer: Object unless the questioning is more specific, your Honor.

Hearing Examiner Kolb: Overruled.

A. I would say yes.

By Mr. Thompson:

Q. If I correctly understood you this morning, you said you had diverted your attention to commercial and car dealer accounts?

A. That is right.

Q. But you still solicit and sell service stations?

A. Well, I solicit more service stations that own their own property and are independent, do not lease their stations.

Q. So that by and large your service station activity is confined to service stations which are not leased stations?

1806 A. That is right.

Q. That interests me very much, and I will come back to that in a moment, if I may.

What percentage of your time do you spend on com-

mercial accounts as against car dealers and service stations?

A. It is divided about in three parts.

Q. Divided in three parts?

A. I think that is fair.

Q. So that you spend about a third of your time on the service station accounts?

A. That is right.

Q. Are you familiar with the survey of service stations which was published and widely circulated, made by the Baltimore News-Post?

A. No, I am not.

Q. How many service stations would you estimate there are in the Greater Baltimore area, and by that I mean Baltimore and within a radius of about twenty miles?

A. How many service stations?

Q. Yes. I am talking of service stations now. I don't mean just pumps, and I don't mean garages. I mean real service stations.

A. It would be a sort of a wild guess.

Q. May I suggest to you that the survey—and ask you whether this would refresh your recollection or aid 1807 you—that the survey says there are 1,180 in that area?

Mr. Kelaher: May I ask when the survey was made? We have no identification of the survey. The Baltimore News-Post has been in business for many years.

Mr. Thompson: I am not testifying. I would be glad to put it on the record if anybody is interested.

Mr. Kelaher: In fairness to the witness—

Hearing Examiner Kolb: The witness has answered it. Let's go ahead.

By Mr. Thompson:

Q. You said you would guess that is about right?

A. I will accept your figures.

Q. Of those roughly 1100 or 1200 stations, upon how many do you call? How many do you solicit?

A. Now?

Q. Yes.

A. About 130.

Q. I beg your pardon?

A. About 130; possibly 150.

Q. 130 to 150?

A. That is right.

Q. If I correctly understood your testimony this morning, you said there were about thirty Atlantic stations in your sales territory?

A. Approximately.

1808 Q. Did I correctly also understand you to say that you called upon about 75 percent of them?

A. No.

Q. Then if the record so reads, that would be an error?

A. I said, I definitely said, that I had solicited at least 75 percent. I do not continually call on 75 percent of them today.

Q. Let's draw a distinction between continually call and solicit, because that leaves me a little in the air, and I think it would be confusing on the record. Let's start with solicit.

A. Go ahead.

Q. Talking now about today, how many of these thirty Atlantic stations which you say are in this Greater Baltimore area do you solicit?

A. Today I solicit approximately six or seven because I find it impossible, due to the competitive market of the oil company tie-in with the service station to sell any more than that.

Q. So that you also continuously solicit those six or seven, or are you drawing a distinction?

A. No, I am not drawing. I continue to solicit that six or seven stations.

Q. And you don't call on any others?

A. Not anymore.

1809 Q. In the past how many of the Atlantic stations did you call upon or solicit, and tell us when?

A. I have to bring my sales reports here to give you the exact dates.

Q. I don't need exact dates; approximate dates will be fine.

A. I said before that I have solicited 75 percent of these stations. Sometimes I went in and made one call and was told by the operator that he cannot handle any other tire but Firestone and I would be wasting my time.

Q. Who told you that, please?

A. The lessee of the station.

Q. Which one? Those you mentioned this morning?

A. No. I mentioned some I had been selling, the various accounts that I stopped in, that I saw one or two times. And I didn't bring a full list but I can. I can get those on my sales reports that I made up.

Q. You can get those from your sales reports that you made up?

A. Yes.

Q. The person you mentioned this morning who sticks most clearly in my mind is a man named Varnadorn. Did I get that name correctly?

A. That is right.

Q. For purposes of the identification of the Varnadorn that you are talking about, with Mr. Kelaher's per-
1810 mission I am going to show you the classified telephone book and see if we have the right man.

Mr. Kelaher: What date is the telephone book?

Mr. Thompson: June 1957.

By Mr. Thompson:

Q. I show you the classified telephone book, page 89, under the heading "Exide Batteries" and point to the name Atlantic Service Center, Edmondson and Swann Avenues. Is that the station to which you were referring?

A. That is right.

Q. And that is listed in this book as an Exide dealer, correct?

A. Right.

Q. Is Mr. Varnadorn a partner of Mr. Wyniger?

A. That is right.

Q. And you know that station well?

A. Yes, sir.

Q. And that is one that you still solicit, one of the six?

A. No. The station was so poor in the new tires sales that I turned it over to another salesman.

Q. You mentioned a conversation that you had with Mr. Varnadorn this morning?

A. That is right.

Q. I would appreciate it greatly if you would repeat your recollection of what was said.

1811 A. The exact conversation?

Q. Yes, sir.

A. Mr. Varnadorn told me that—

Q. Before you say just what he told you, would you mind—

A. You asked me for the conversation.

Q. Would you mind telling us the approximate date?

A. Approximately two years ago.

Q. That would be then in the latter part of 1955, perhaps?

A. I would say it would be a little later than that. It would be into 1956.

Q. The early part of 1956?

A. Yes.

Q. Where did the conversation take place?

A. In the service station.

Q. Were you there making a solicitation?

A. That is right.

Q. Now repeat as closely as you can exactly what was said.

A. I asked Mr. Varnadorn to—

Q. Excuse me. Was there anyone else present?

A. There were, I believe his partner, I am almost sure his partner was standing there.

Q. Mr. Wyniger?

A. Yes. But he really didn't have too many comments to make.

Q. He heard the conversation? He was present?

A. I am almost positive.

1812 Q. Before you repeat what Mr. Varnadorn said, tell me the circumstances, will you please; what led up to it?

A. I had a package deal, a price on approximately 25 tires that Mr. Varnadorn could buy at an attractive discount. And he made the comment that the price is right and he had conceded he could sell these tires, but in lieu of the fact that he was so close to Firestone stores, his comment was that the salesmen and big shots would come over and see other brand tires in this station and put him in definite jeopardy with his lease.

And for that reason he did not order the tires from me and sort of a sympathy order he did order several used tires. And he has been buying nothing but used tires from Burke-Savage in the last two years. If I may continue to go along with that, he did—

Q. I would be happy to have you do so.

A. I will tell you what he did say to me: "I will tell you what I will do, I will take some Firestone take-offs

from you, because I can take some Firestone take-offs and disguise them in with my own inventory so they will not show up as so-called foreign brands."

1813 Q. Is it your impression that the conversation that you have just related is the same or a different conversation from the one you testified to this morning?

A. It is the same conversation just elaborated.

Q. When you answered Mr. Kelaher's question about conversation, why did you not state any of the things which you have now recalled?

A. Because I am going into a long procession, and I just thought I had answered it in a smaller concise fashion.

Q. I see.

A. Then, he said he couldn't stock any other brand but Firestone, and I think what I said summed up to the same thing. I was just trying to give you the related conversation almost as it happened, to my recollection.

Q. But you have been familiar with that station for a long time, have you not?

A. I have been familiar with his station from the day it was built.

Q. And since the day it opened for business, has not that station been Exide dealer?

A. Let me say this: our battery business—

Q. That is not responsive to my question. Will you please answer my question?

A. I do not know. I was trying to answer it, in a fashion.

Q. In a fashion.

1814 A. I was trying to tell you I didn't solicit the battery business there.

Q. Why didn't you solicit the battery business?

A. Because the battery business with Burke-Savage has taken almost the same back seat as the accessories business due to—

Q. Because Firestone is forced upon these stations?

A. That's right.

Q. Is Firestone forced upon this station to which you are referring?

A. Maybe not this particular station.

Q. But this station you said was right next door to the Firestone store, and the big shots came over from the Firestone store to see the Firestone equipment.

A. Our conversation related to tires only, and I must say this to you: I can always use my tires as an opening wedge. If I can sell a customer my tires then at a later date, I try to get other parts of his business such as his recapping and his battery business. But if I cannot sell him tires, I couldn't even go into the conversation of selling him batteries.

Q. Is it not a fact that at this station there are Exide batteries all over the place?

A. Until you showed me this, I had no knowledge of what kind of batteries he was selling.

Q. Did you ever—

A. I can honestly say that. When I walk in, my mind is in the track of selling tires and tubes as an opening up of selling a contract, and at later dates, I may try to sell him other products.

If he is an Exide dealer, I had no knowledge of it until you opened that book, and that is the Gospel truth.

Q. Does this man sell any Firestone batteries at all?

A. I do not know what kind of batteries he handled until you showed me this ad. And just because—

Q. Now—

A. I would like to say this: because you have shown me this ad, is it possible that Exide just put his name in? I still don't know whether he handled Exide batteries or not.

Q. You are on the stand. I am not.

A. I am telling you the truth.

Q. Do you know who else sells this account? What other people, wholesalers in the TBA business, are the suppliers?

A. I do not know.

Q. Of this stage?

A. I do not know.

Q. Is Monarch Products one of the wholesale TBA people?

A. I would have no knowledge. I said before—

Q. Now, when you go into a station, don't you see Thermoid belts and A. C. filters all over the place?

A. I don't know if you remember. I said I turned this account a year ago over to another salesman. I don't know how long he may have been an Exide dealer—for the last three months. I haven't been in that station for 12 months. So, I wouldn't be—

Q. So, this is not one of the accounts that you now solicit?

A. That I solicit personally?

Q. Yes.

A. No. But we have another salesman that calls on him now.

Q. And he sells Burke-Savage tires to this account at the present time, doesn't he?

A. Used tires. He sells some used tires to this account.

Q. Doesn't the Martin Auto Supply sell a lot of TBA to this particular station?

A. I do not know.

Q. How about Norris—R. W. Norris?

A. I am not familiar with any of his suppliers.

Q. Or any of the other suppliers of this station?

A. Except Firestone. It was the only conversation that we had.

Q. You do know from visiting the station that this

man carries many TBA products which are not Firestone, don't you?

A. No, I didn't.

Q. Let's go to one that you may know a little better. Another man you mentioned was a Mr. Eckhardt?

A. Yes.

Q. And that station is at Fleet and Fagley Street?

A. That's right.

1817 Q. You testified this morning about a conversation that you had with Mr. Eckhardt. Before I ask you about that I would like to ask you this: was that Mr. Tommy Eckhardt or Mr. John Eckhardt?

A. At the time I called on him, it was Mr. Tommy Eckhardt.

Q. Is Mr. John his brother?

A. I believe he is.

Q. Is Mr. John also now at that station?

A. I haven't been in that station for four years.

Q. For four years?

A. Three or four years, I would say.

Q. So, that is not one of the stations that you solicit?

A. Not today.

Q. Does one of your salesmen solicit that station?

A. I turned the same account over to another salesman, and I believe that he is calling on them but not getting any kind of business, because I have never seen—I haven't seen any tickets in reference to that account.

Q. I would like you to repeat, recalling this time what you said this morning, what the conversation was that you had with Mr. Tommy Eckhardt. And, then, sir, I am going to take pleasure comparing what you said this afternoon with what you said this morning. So, I ask you to be careful. Repeat the conversation.

Mr. Kelaher: I think that part of the question is
1818 unnecessary and uncalled for.

Hearing Examiner Kolb: Overruled.

The Witness: Mr. Eckhardt told me that with his—

By Mr. Thompson:

Q. First of all, what were the circumstances? Give us the approximate date, the place the conversation took place and what led up to it.

A. I had been calling on Mr. Eckhardt for many years. At the time he was instructed that Firestone is now selling Atlantic stations he put in a complete line of Firestone tires and accessories and told me that he will not be able to stock any U. S. products.

Q. That was the end of the conversation?

A. Well, you are asking me to give you conversation almost word by word that happened three or four years ago. And if I stood up here and told you I could give you that, I don't think I would be fair.

Q. After this conversation you went away and did not attempt to sell him any more U. S. Royals?

A. I made several trips back and saw it was fruitless.

Q. Recently?

A. Oh, no. Since from that date. I said I hadn't been in the station three or four years.

Q. Entirely hopeless to try to sell him any U. S. Royal tires?

A. I would say so; yes.

1819 Q. Do you keep in touch with what your competitors do?

A. I have no way of getting my competitors' records, if that is what you mean.

Q. Don't you know that Mr. Kimmel, your competitor, the other distributor in Baltimore, sells U. S. Royal tires to this station, and that they are stocked?

A. Is that Mr. Tommy Eckhardt that still has that station?

Q. Mr. Tommy and Mr. John Eckhardt.

A. They both have the station?

Q. Don't you know that?

A. No, not if I haven't been in the station for three or four years, I wouldn't know.

Do they sell them U. S. Royal tires?

Q. Yes, sir. For stock. And you didn't know that?

A. No, I didn't.

Q. Did you know that this station also stocked Good-year tires?

A. No, I didn't know that.

Q. And that Mr. Kimmel is the supplier?

A. No, I didn't know that either.

Q. Maybe you had better get your salesman on the ball, Mr. Savage.

Mr. Kelaher: Objection, your Honor. I think that is unnecessary.

The Witness: I think that is uncalled for.

By Mr. Thompson:

1820 Q. Being gratuitous advice, I am sure it is worth just what you are paying for.

A. Did you know that Mr. Kimmel has certain service stations that he has a reciprocity deal with, that he in turn will get all his gas from his trucks and such and in turn they will buy tires from him? There are several accounts that he has that with. In view of the fact that Mr. Kimmel has a branch on Fleet Street, I would presume from what you are telling me here that he has a reciprocity dealing, the fact that he buys all his gas for all his trucks, and in turn he is buying tires from him. And again the only way I would have to do anything with myself or the salesman was to go down there and see that all our trucks bought gas from him so we could throw Mr. Kimmel out.

Q. One day you will be wholly-enlightened because we will ~~cause~~ ^{call} Mr. Eckhardt and have him tell us about it.

Mr. Kelaher: Which one?

Mr. Thompson: Both of them.

By Mr. Thompson:

Q. You made a kind of a general broad statement that you couldn't put up signs at Atlantic stations?

A. That's right.

Q. Which stations? Which of the six are you talking about?

A. Which of the six Atlantic stations?

Q. Yes.

1821 A. Well, the station that I mentioned here we couldn't, Leonard's Atlantic, Eckhardt, Mr. Varnadorn. We couldn't put signs up. In fact, I don't know of any Atlantic station where we could put signs up, anywhere at any time.

Q. You get around to only six?

A. I have only six.

Q. I guess we had better have a list of the six that you know something about. Who are your six customers?

A. I have to get them off my sales report.

Q. Let me start on another attack. You said this morning that you had a routine list of service stations upon whom you had called for many years, is that not correct?

A. That's right.

Q. And it is still the same list?

A. No, that list varied. They are always lessees leasing their leases, getting out, and new men coming in. It is a flux.

Q. Can you remember the names of six Atlantic stations upon whom you call?

A. I would have to look at my sales reports.

Q. Can you remember the names of any of them except the three that you have mentioned?

A. I would have to think.

Q. By all means. That would be perfectly charming if you did.

1822 A. This all relates back to such a small amount of business from these stations.

Q. Maybe I can refresh your recollection. You cannot recall them?

A. You probably have a list of them right there.

Mr. Kelaher: May I ask counsel if his question pertains to accounts now being solicited or past accounts that were solicited.

Mr. Thompson: Either one, if they can remember past accounts that will be fine.

Mr. Kelaher: Are you asking now about present accounts or past accounts?

Mr. Thompson: Both.

Mr. Kelaher: The question is unclear, your Honor. I think it should be more specific.

The Witness: I just thought of another Atlantic station which I sold tires to.

By Mr. Thompson:

Q. Good, Good, Good. Which one?

A. It was Jerry's Atlantic, then it turned into Joe's Atlantic, and then he got thrown out.

Q. For buying your tires?

A. He definitely told me he got thrown out for buying other people's products, besides the products coming from the oil companies.

1823 Q. Let's have all the details about him and the whole conversation. This is Joe or Bill, which?

A. Joe's.

Q. This is Joe's?

A. Joe's Atlantic.

Q. Where was his station?

A. On Eastern Avenue.

Q. Eastern Avenue?

A. Yes. At the corner—this may be—

Q. That is the station at 829 Eastern Avenue?

A. I believe that is it. Is that at the—Is there a road, a street that runs through there that is listed on that? This man would know. Is that the station that Jerry Brenner had previously?

Q. Yes, that is the station.

Let's have the conversation with Joe, if that was his name.

A. I called on the man for a short while. I called on this man a very short while..

Q. You said you had a conversation with him. I am trying to pin you down.

A. I had a conversation with him when I was in his station.

Q. What did he say?

A. He said it is awful tough for him to buy any products except those that he is supposed to buy through 1824 the oil company.

Q. Mr. Savage, do you know that that station has a U. S. Royal Tire sign on it?

A. I know that. Jerry Brenner put it there.

Q. And that is certainly not one of the stations that wouldn't let you put a competitive sign up, is it?

A. After he put it up, he was in the station a very short while.

Q. Don't you know that sign is still there?

A. Is it still there?

Q. And the present dealer sells U. S. Royal?

A. And the dealer who went in after Jerry Brenner was there a short while. Then, I saw a flux of dealers getting out it wasn't worth while calling on that station anymore either.

Q. So, that is one of the stations you stopped calling on?

A. That's right.

Q. So that we are still down to three, aren't we? Three Atlantic stations that you know anything about?

A. I would have to get my sales report to give you any other information.

Q. Let's just pick a couple of stations. Take a small town. Do you sell at Elkton?

A. No, I don't.

Q. Perryville?

A. No.

1825 Q. Do you go down to Annapolis?

A. Yes, I go down to Annapolis.

Q. Then, you probably remember the Naff Atlantic Station there?

A. I only call on several car dealers in Annapolis.

Q. No service stations in Annapolis?

A. No service stations.

Q. You don't look at the service stations when you go down there?

A. I looked at one Crown station one time when I was down there.

Q. I guess we will have to ask you about Baltimore, then. Do you know where 33 and Barkley is? Do you remember that station?

A. I know where it is.

Q. It used to be the Johnson station, now Pool and Hunt, Atlantic lessee station.

A. Yes.

Q. That has been a Lee dealer forever, hasn't it?

A. Johnson had the Lee franchise.

Q. And that is still a Lee station, isn't it?

A. Is it still Lee?

Q. I am asking you if you know.

A. I don't know. I wouldn't be familiar. I knew Mr. Johnson and I don't believe he is in the tire business anymore.

1826 Q. That station has a big Lee sign on it, hasn't it?

A. It could be. I am not familiar with it.

Q. How about Herman Shartoff, Pratt and Monroe, are you familiar with that?

A. No, I am not.

Q. Don't know it at all?

A. No, sir.

Q. Do you know the Welkowitz Station at Hanover and Hill?

A. No.

Q. No?

A. No.

Q. Salzman Station on Reisterstown Road?

A. I don't solicit that station either.

Q. Do you solicit the Schilling Station at Joppa and York?

A. No, I don't.

Q. Silberstein at Liberty and Howard?

A. No, I don't.

You named about eight stations. Is that right?

Q. I will name 30 if you like?

A. You were naming those stations for what reason?

Q. Reasons of my own. Just wanted to know if you got around at all. Better look them up in your book sometime Mr. Savage.

Mr. Thompson: That is all. Thank you.

Mr. Kelaheer: May we have a couple of minutes, your Honor?

1827 Hearing Examiner Kolb: Does that finish cross-examination?

Mr. Kelaher: Yes, they are finished. He said that was all.

Hearing Examiner Kolb: Do you want a few minutes?

Mr. Kelaher: Just a second.

No questions, your Honor.

Hearing Examiner Kolb: Thank you.

(The witness was excused.)

Mr. Kelaher: May we have a short recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

1828 ROLLAND C. BEST was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kaplan.

Q. Would you state your name and home address, please?

A. I am Rolland C. Best. I live at 102 Shetland Hills Drive, Lutherville, Maryland.

Q. Mr. Best, are you associated with the Best Battery Company, Inc.?

A. I am president and treasurer.

Q. And how long have you been operating under the name Best Battery Company?

A. We were incorporated on November 1, 1953.

Q. And had you been operating under any other name prior to that time?

A. Yes. Prior to that time, for a period of about four months, we had a partnership going under the name of B&G Battery Company.

Q. And have you been known under any other name other than B&G and Best?

A. When we originally went into the battery business we were known as the Dev-i-Co Battery Company.

Q. What year did that begin, sir?

A. That was from May of 1951 until October of 1952. I believe that is right.

Q. Are you the sole stock owner of the Best Battery Company, Inc.?

A. The stock is owned jointly by my wife and myself.

Q. What product or products does your company sell?

A. We sell nothing but batteries. Lead-acid batteries.

Q. Does that include both wet and dry-charge?

A. Both.

Q. Do you manufacture these batteries?

A. No. These batteries are manufactured for me under contract, on an annual renewal basis.

Q. What company does that manufacturing for you?

A. At the present time they are manufactured by Scranton Battery Company, in Archbold, Pennsylvania.

Q. And prior to this company?

A. Price Battery Company, Hamburg, Pennsylvania.

Q. About how long have you been in business now, sir?

A. Since May 1951, in the battery business.

Q. And what territory does your company cover in its operations?

A. We have the entire United States, but we limit ourselves to an area within twenty miles from our shop.

1830-1839 Q. How many salesmen does your company employ?

A. One.

Q. Is that yourself or in addition?

A. In addition.

Q. How many trucks does your company operate?

A. Three, and a station wagon which I use.

Q. Mr. Best, are there any Atlantic service stations in your territory?

A. A considerable number.

Q. Could you approximate the number at all?

A. I have never gotten statistics on them, but I know that there are quite a few of all kinds. I wouldn't have any idea as to the number.

1840 By Mr. Kaplan:

Q. Mr. Best, do you have any competitors in your territory as far as the sale of batteries is concerned?

A. Yes. We have Willard, Autolite, Exide, Bowers, Delco. Probably Bowers is the one most nearly like ourselves who sell direct, who compete on city and state contracts and things of that nature.

Q. These are all manufacture outlets?

A. Bowers is a manufacture. I think Bowers is the only manufacturers' branch in Baltimore. The rest of them are distributors or jobbers.

Q. Do you have any other jobbers as competitors in your product?

A. Other jobbers? Well, every auto supply house is a competitor. Every tire dealer is a competitor. That is, a tire distributor is a competitor because they all handle batteries as a sideline.

Q. Are any jobbers that specifically sell to Atlantic stations your competitors?

A. I would have to admit that everybody is my competitor. They are all my competitors, wherever they sell.

Q. Could you name your principal competitor in relation to Atlantic stations?

A. Well, that would have to be either Firestone or Goodyear.

Q. How does your price compare?

A. Naturally being on a lead basis, which I believe is the same basis on which most manufacturers buy their batteries, we are in position naturally with our limited advertising to offer a higher quality product at a lower price.

Q. It is a higher quality product?

A. I believe so.

Q. How does your service compare to these competitors?

A. We pride ourselves on the fact that you call us within an hour and we will have your battery. That is why we confine ourselves to an area within twenty miles of the shop.

Q. Mr. Best, since you have been in business, have 1843 you had many sales to Atlantic stations in batteries?

A. Do you mean relative to my overall business or just to Atlantic stations as such?

In the overall picture they are inconsequential. I can remember offhand three, four, or five Atlantic stations we did business with:

Q. And Atlantic as such?

A. Yes, one, Jack's Atlantic at the corner of Lockraven Road and 25th Street, I think it is, a couple of brothers there, Jack and Simon. I don't know their last name. They call it Jack's Atlantic. They have been out of business for the last year and a half or so.

Q. Did you stock this Jack's Atlantic station?

A. Oh, no. They had Firestone in the front but we bring them in the lube room.

1844 By Mr. Kaplan:

Q. When were you selling Jack's Atlantic, sir?

A. This sheet, which shows a balance carried forward, the last sheet is dated—the first entry is September 27, 1955. There was a balance carried forward which was

from a previous sheet. But this date is dated September 27, 1955. And the last entry on this sheet is February 2, 1956.

Mr. Kaplan: Your Honor, I would like the sheet that Mr. Best is holding to be marked for identification, please.

(Whereupon, the document referred to was marked Commission's Exhibit 341 for identification.)

By Mr. Kaplan:

Q. Does Jack's Atlantic still buy your batteries?

A. No. They haven't bought from me since the last entry on that sheet.

Q. Is Jack's Atlantic still operating?

A. I don't believe so. I believe they have changed hands.

Q. Did they stop purchasing from you before they went out of business?

A. I believe they did.

Q. Mr. Best, have you been able to, on a stocking 1845 basis, sell any Atlantic stations?

A. Don't have a one on the books.

1849 Q. Mr. Best, you said that you had a salesman in your employ now, is that correct?

A. Yes, sir; since February 4, 1957.

Q. Had you had any salesman in your employ prior to that time?

A. Oh, yes. I once made an effort—I learned early in life in this business if I wanted to survive and feed my family I had to forget about gas stations and go out and make a living for myself, which I have done. I always had in mind that there is a tremendous amount of business out there, so why can't you get it. So I made a concentrated effort. I hired a fellow who worked for eight years for the Bowers Battery Company out in some little territory in back of where the old ferry used to cross to go to

Atlantic City. He had that entire area back there—New Jersey, and part of Delaware—and he worked off a truck. He came to me and said "Look, I have been out of this business for five years but I did do a wagon job for Bowers and I did a good job."

So I proceeded to call up the vice president of Bowers, whom I know very well, and asked him about the man and the man said, "Yes, he did a good job for us and I would like to hire him, if we could, if we had an opening for him or if he wanted to come back to work for us."

On that basis I took the man on and supplied him with a truck and said, "Look, dad, all you have to do is 1850 get out there, call on gasoline stations, automobile repair shops, used car dealers and boys of that nature." And I said, "With the experience that you say you had, and as good a man as you tell me you are, we shouldn't have any problem, with as good a battery as I am going to give you to sell." So he went out there—

Q. When was this?

A. This was in September 1955, that I put him on.

Q. What was the man's name?

A. His last name is Baughner. His first name I think is Frank. I don't even remember that. I have a record of it here. It is Bill.

Q. Go ahead.

A. I kept a record of what the man did. Of course this is—I wanted first of all to see what he did do because he came to me so highly recommended that I wanted to meet a good salesman for a change.

And secondly, I figured that if I was losing money on this bird I wanted to know it right quick, which is exactly what happened. Here is his volume of sales for September. I paid him an advance of \$300 a month. My gross profit in the month of September was \$231.33. So I had a loss of \$68.07, on salary, plus my truck expense, plus maybe a few other things which we won't go into.

In October I have his entire record here. In October 1851 ber I have his entire record here. In October his gross sales for the entire month were \$1,457.30. His total sales for September and October then equalled \$2,497.63. My gross profit in the month of October was \$388.46. That was gross. I advanced him \$300 again plus truck expense.

In the month of November he dropped back a little bit. No, he didn't, either. In the month of November he did \$1,751.82, which is traditionally one of the best months in the battery business. He did \$1,751.82. I advanced him \$300 again. I don't think I even bothered to take a gross profit that month to see how I came out. I think I made up my mind to let him go.

In the month of December, which was his last month, his sales were \$1,381.59, net. I advanced him \$375 because of Christmas and I had a loss of \$7.74 plus truck expense. So here is the whole result of a man who spent eight years in the business calling on TBA accounts.

Q. Mr. Best, did this salesman during this period call on Atlantic stations?

A. Oh, yes. He called on everything that came along. I limited him to gasoline stations, automobile repair shops, used car dealers, new car dealers. In other words, what we refer to as the scum of the business.

1852 A. I have here these pink copies of the salesman's copies of my autographic register. And in here you will find Atlantic, gasolines, used car dealers. This is as they came out. These will probably tally with the ones on front. At least they should.

Q. Were these large purchases?

A. No.

Here is the record. These are all the sales he made.

He made a good many sales but there isn't any money in it.

Mr. Kaplan: Your Honor, I would like to have these records marked for identification.

(The documents referred to were marked Commission Exhibits 342-A to Z-1, 343-A to Z-40, 344-A to Z-62, and 345-A to Z-55 for identification.)

By Mr. Kaplan:

Q. Mr. Best, did you receive any reports from your salesman as to why he was experiencing so much difficulty selling service stations, and in particular Atlantic?

Mr. Correa: I suggest that the answer to that question be Yes or No, because I apprehend there may be an objection to the next one.

1853 Hearing Examiner Kolb: Answer Yes or No.

A. Yes.

1854 By Mr. Kaplan:

Q. You presently have another man in your employment, is that correct?

A. I do.

Q. What are his duties?

A. He is—I supply him with a Courier, a Ford Courier. He is a truck salesman. He doesn't like that, but that is what he is, a truck salesman.

Q. Does he call on Atlantic, * * * stations?

A. In the course of his rounds as he is going around, if there is a station in the immediate area where he is, he will drop in.

Q. Has he had any success in selling these specific accounts, these specifically named stations?

A. No more than my other boy had.

Mr. Kaplan: No further questions, your Honor.

Cross-Examination by Mr. Correa.

Q. Mr. Best, in the year 1956 did the annual volume, dollar volume of your business, increase substantially over the preceding year?

A. In 1956? Not substantially; about 12 percent.

Q. It did increase?

A. 1957 increased again.

Mr. Kaplan: Your Honor, I object to the question. We did not go into the volume of business of Mr. Best's company.

1856 Hearing Examiner Kolb: I will overrule the objection.

By Mr. Correa:

Q. What was your annual volume in the year 1955?

A. 1955?

Q. Yes.

A. I wish I had my accountant. Say \$125,000.

Q. And it increased?

A. 1956 it went up to \$138,000 or \$140,000. In 1957 it is around \$180,000 to \$200,000.

Q. Or at the rate of?

A. My fiscal year ended in October. Calendar year it will go over 200.

Q. By the way, at the time you put batteries in Russ Cowley's station, did you at that time have a dry-charge battery?

A. I don't believe I did.

Q. Something you said suggested that maybe you did.

A. They were available to me. Let me put it that way. But whether or not I put any in there I can't say. I probably had some in the shop. But whether I put in any with Russ I can't answer Yes or No. I will qualify that further by stating that they have been available to me since—at that time Price was my supplier, and I know they were

making them for, say Firestone, for instance, or Atlas, 1857 and they also were available to me through the same channels.

Q. Do you mean from Price?

A. From Price, at additional cost.

Q. You ascribed the fact that you were able to sell your batteries at a lower price than some of the companies you mentioned as your competitors, as battery manufacturers you mentioned—because of your limited advertising, is that correct?

A. Well, limited advertising would be one factor. Perhaps lower mark-up would be another.

Q. When you speak of advertising, were you referring to the fact that such companies as Willard, Auto-Lite, and Exide have nationally advertised brand names?

A. And Delco.

Q. And Goodyear?

A. Goodyear. Goodyear you see very little advertising of batteries. I only see tires. But Delco is I believe the biggest advertiser of batteries at the present time.

Q. The name Goodyear is a nationally advertised name as a name?

A. As a name, oh, definitely; very definitely.

Mr. Correa: I have nothing further.

By Mr. Ballard:

Q. Mr. Best, I take it that today you don't personally call on any Atlantic service stations, is that correct?
1858 A. I devote myself to commercial and industrial

business. Personally, with few exceptions. I have two or three buddies that operate gasoline stations where I stop in myself. But that is of long standing. I do not make it a point to call on any new ones, if that is what you want.

Q. You have one salesman, is that correct?

A. That is correct.

Q. I am speaking currently.

A. Currently, yes.

Q. I take it that salesman also does not call regularly on service stations?

A. He is getting educated.

Q. You say he doesn't call on Atlantic service stations?

A. I wouldn't say he doesn't call.

Q. Do you know who he does call on?

A. Oh, yes. He calls on Atlantic, ~~Sinclair, Shell, Esso.~~ He calls on everybody. One of the ways that you can best train a man in this business is to have him call on gasoline stations, because there he is really brushing up on his sales talk, because he will get all kinds of replies and he can really get to know the answers to them.

Q. He will get a lot of brush-offs?

A. He will get brush-offs.

Q. You mentioned Goodyear. Do a fair number of Atlantic stations stock Goodyear?

1859 A. I have seen them in some Atlantic stations.

Q. Do you happen to recall any in^o which you have seen them?

A. No, I can't say as I have, because I can't name any specific instances where I have.

Mr. Ballard: No further questions.

Redirect Examination by Mr. Kaplan.

Q. Mr. Best, we missed one question about Mr. Baugher before. What was his sales territory?

A. Well, he left here and he traveled on Route 40 as far as Mountain Road—

Q. Would you say—

A. Metropolitan Baltimore. An area within Bel Air, possibly, and as far north as Aberdeen, and maybe out Washington Boulevard to Southwestern Boulevard and

through Arbutus and throughout there, and up through Towson.

Q. And Mr. Correa asked you with reference to the volume of business you have done in the last three years, and each year you indicated an increase in that volume. Would you say that any substantial amount of that increase has been due to an increase in service station business?

A. Definitely not.

Mr. Kaplan: Your Honor, at this time we do not choose to enter into evidence Exhibits 341 through 343, and would like to have the witness retain them and have them 1860 available for examination.

Mr. Correa: By both sides.

Hearing Examiner Kolb: Is that all that you have of this witness?

Mr. Kaplan: Yes, sir; that is correct.

(Witness excused.)

Hearing Examiner Kolb: The testimony of this witness with reference to oil companies other than Atlantic will be received, subject to a motion to strike by Atlantic.

Mr. Correa: May the testimony to the extent that it is with reference to Atlantic-Firestone relations be received subject to a motion to strike by Goodyear?

Hearing Examiner Kolb: It will be so received, but I don't think there was any.

We will take a short recess.

(A short recess was taken.)

1861 Hearing Examiner Kolb: The hearing will be in order.

Whereupon, ELMER LANG was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Elmer Lang, 500 East Fourteenth Street, Baltimore.

Q. Are you an employee of the R. J. Looock Company, Mr. Lang?

A. That is correct.

Q. And how long have you been employed by that company?

A. Sixteen years.

Q. What is your position with the R. J. Looock Company?

A. I am an outside salesman.

Q. How many years have you been an outside salesman?

A. Nine years.

Q. So, that would put you back to 1948 to date that you have been an outside salesman?

A. Yes.

Q. What class of products are sold by R. J. Looock Company?

A. Well, we handle the general TBA line, which would be tires, batteries, chemicals, accessories.

Q. Would you name the principal brand names?

A. We have Mansfield tires, Autolite batteries, 1862 DuPont chemicals, Gates fan belts and radiator hose, Fram oil filters, and recently added Purolators.

Q. When did you add Purolator oil filters?

A. Back in 1956.

Q. Are there any Atlantic service stations in your marketing area?

A. Yes, there are.

Q. Approximately, how many?

A. Well, in the particular territory I work, I would say about 15 or 20.

Q. Do you solicit TBA business from Atlantic service stations?

A. I did at one time. I haven't at the present time.

Q. When did you begin soliciting such business?

A. Well, when I first went out in the territory around 1948-1949, up until about a year and a half or two years ago.

Q. How many did you solicit originally, do you recall?

A. I think about—I had approximately eight stations. Eight to ten. It is hard to recall exact numbers.

Q. How many do you solicit at the present time?

A. I have one station at the present time that I call on.

Q. During the period when you have solicited Atlantic stations, have you been able to sell tires to Atlantic stations?

A. No. I never have sold tires to Atlantic stations at all.

Q. What brand of tires do you find principally in Atlantic service stations?

1863 A. I have found both Firestone and—

Mr. Thompson: I object unless the question is limited to the one that he solicits.

By Mr. Kelaher:

Q. I am referring now to that based on your observations of the Atlantic stations in your market—

Mr. Thompson: He hasn't stated any observations.

Hearing Examiner Kolb: He stated that he used to call on Atlantic stations.

Mr. Thompson: Eight, he said.

The Witness: That is correct; approximately eight.

Mr. Kelaher: He testified that there were others in his area, though.

Mr. Thompson: He hasn't testified that he sold any, Mr. Kelaher:

Mr. Kelaher: If he didn't see them, I wonder how he knows they were there.

The Witness: In traveling around you certainly know the number of stations that are available to you to call on. I don't say that I solicited all Atlantic stations. I am only referring to the ones that I call on or had called on at that time.

By Mr. Kelaher:

Q. What brand of tires did you find predominantly in those stations?

1864 Mr. Thompson: Which stations? May we have that specifically?

The Witness: Mostly Firestone.

Hearing Examiner Kolb: He said those stations which were the ones which he called on.

Mr. Thompson: The eight?

The Witness: That is correct.

By Mr. Kelaher:

Q. What brand of batteries did you find in those stations?

A. Firestone.

Q. What was your experience in selling batteries to those stations?

A. I have never been able to sell the station or Atlantic station a stocking deal of batteries. It is mostly emergency pick up.

Q. And what has been your experience in selling accessories to those Atlantic stations?

A. Mostly fill-in.

Q. Have you sold accessories on a stocking basis to those Atlantic stations?

A. No.

Q. Who was the principal supplier of TBA to Atlantic stations?

A. Firestone.

Q. Are you competitive as to price with the sup-1865 plier of Firestone products?

A. To my knowledge, I would say Yes in the chemical line and the battery line.

Q. What about the tire line?

A. Tires are not a main item as far as our house is concerned. We do very little with tires.

Q. How does your delivery service compare with the delivery service of the Firestone suppliers?

A. Well, I would say our delivery service, we can give a man service within a couple of hours, the same day that he calls.

Q. Is that as good as the Firestone delivery?

A. I would say to my knowledge it is as good if not better.

Q. What type of service station identification do you find in Atlantic service stations?

A. I am referring to the window valance and outdoor signs?

A. Mostly Firestone.

Mr. Thompson: This is limited to the eight stations that he solicits?

The Witness: I am referring to the eight stations that I mentioned before.

By Mr. Kelaher:

Q. Did you at one time call on McKaig Atlantic Station?

A. Yes, I did.

Q. Where is that located?

1866 A. That is located on York Road in the forty-four hundred block.

Q. Had Mr. McKaig been purchasing any TBA products from you?

A. Mr. McKaig purchased some filters from us only on a fill-in basis, not as a stocking dealer.

Q. Do you still call on Mr. McKaig?

A. No, I do not.

Q. Why did you stop calling on him?

A. For the reason that the volume that I received from Mr. McKaig was not sufficient to warrant my contacting him any more.

Q. Did you ever have any conversations with Mr. McKaig concerning the matter?

A. I talked to Mr. McKaig about a number of items that he carried, and particularly his oil filter line, and he told me that he was unable to purchase from us on a stocking basis.

Q. When was such conversation held?

A. That was around the early part of 1956.

Q. Did he tell you the reason why he was unable to purchase from you?

A. He said he was mostly obligated to buy his TBA items from Firestone.

Q. Did you at one time call on Bill's Atlantic Station, 909 Dendalk Avenue, Baltimore?

A. Yes.

Q. Do you sell any TBA products to this account?
1867 A. No, I haven't.

Q. Have you had any conversations with the operator of this station concerning TBA?

A. The first few times that I called on Bill Batchelse, we had some discussion in regards to his stock and his merchandise on his shelf. He told me at that time that the best he could do for me would be refills or emergency stock orders; mostly his TBA items came from Firestone through the Firestone salesman.

Q. When did you have this conversation with the operator of Bill's service station?

A. That was the latter part of 1955.

Q. What TBA stock does this operator carry?

A. He carries, of course, Firestone stock and his Firestone batteries, and tires, and he now has Fram oil filters.

Q. Did you at one time call on the—

Mr. Thompson: Could you fix the date of that conversation, Mr. Kelaheer?

Mr. Kelaheer: Late in 1955.

By Mr. Kelaheer:

Q. Did you at one time call on the L&S Atlantic Station, 2700 block of Gwynn Falls Parkway, Baltimore?

A. I did.

Q. Will you please state when you called on this account, and what your experience was?

A. The L&S Service Station I contacted in 1953, was introduced to that particular operator through an 1868 other dealer that I called on. The station had not been opened as yet but I had what we term an "in" and I had written a stock order for that particular station of shelf merchandise.

Q. Shelf merchandise?

A. Shelf merchandise which we referred to as stock orders, which is chemicals, plugs, and things of that nature.

And the order was written and a legitimate order, and when I returned the following week to find out the delivery date—the date of delivery—the gentleman told me that he would not be able to buy anything from me or give me that order, only on emergency things that he needed. So, I asked him—

Mr. Thorapson: What gentleman is that? Are we going to have some identification?

Mr. Kelaheer: Yes. He is now referring to the operator of the station.

By Mr. Kelaher:

Q. Is that right?

A. That is correct. And—

Mr. Thompson: But there isn't any gentleman called L&S Station that I know of.

By Mr. Kelaher:

Q. Who is the gentleman you talked to?

A. I don't recall the gentleman's name at this particular time. It was back in 1953. He has since changed his operation. He has a station in Brooklyn now. I believe it is Texaco.

1869 Q. Would it refresh your recollection if I mentioned the name Lester Lewis?

A. Right. That is the gentleman.

Q. Getting back to your conversation with Mr. Lewis, would you please state the substance of the conversation?

A. Getting back to the time that I checked back with Mr. Lewis to get a delivery date on the merchandise, he then told me that he was approached by Firestone salesman and supervisor, and that his initial stock order must come from Firestone one hundred percent. If there is anything that they didn't have, that we had, he was free to buy it from us.

Consequently, that order was terminated as far as R. J. Loock and Company was concerned and as far as I was concerned, which amounted to several hundred dollars.

Q. Did you thereafter sell TBA to Mr. Lewis?

A. Only on a very limited basis. Emergency orders is about all we were able to get.

1878 Q. What has been your experience in placing advertising signs in Atlantic service stations on TBA products?

A. We have been unable to place any type of advertising in any of the Atlantic stations.

Q. Are your major lines nationally advertised lines?

A. That is correct.

Q. What line of batteries do you carry?

A. Autolite.

Q. Would you tell us something about the R. J. Loock Company? R. J. Loock Company is a large jobber, is it not?

A. We are considered as being one of the largest jobbing houses in the city, and also one of the largest firms on the East Coast in the automotive jobber business.

We have eight men out on the street. We have some seven or eight delivery trucks. Most of our lines are nationally advertised lines. They are lines that millions and millions of dollars have been spent on advertising, such as Autolite, Champion spark plugs, the DuPont line, Gates fan belts and radiator hose, and Fram oil filters.

We have nothing in an off-brand nature that the average car owner hasn't at one time or another seen advertised in some magazine, of some description. It is all nationally advertised merchandise.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Cross-examine.

Mr. Correa: We would like a moment, if your Honor please, off the record.

Hearing Examiner Kolb: Very well.

(A short recess was taken.)

1881 Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Correa.

1892 Mr. Correa: No further questions.

By Mr. Thompson:

Q. Mr. Lang, you have been in the automotive supply business as I recall your testimony, a total of about 16 years?

1893 A. That is correct.

Q. As an old timer I suppose they call you "auld Lang syne"? I am not clear on what your sales territory is. Would you be good enough to explain it to us?

A. It is pretty hard to explain. As I explained before, we in Loock and Company don't work on a specific territory. In that I mean we don't have any boundaries of any description. We are free to call in the city or in the county or anywhere that we choose to go. We are not limited to who we call on. We can call on anyone that we choose.

Q. Do the various salesmen for your house call upon the same service stations?

A. No. You mean the same account?

Q. Same accounts.

A. The same two people calling on the same account?

Q. Yes.

A. No, we do not.

Q. Do you have some method by which you divide the accounts among the salesmen?

A. No. The only way I can answer that for you is in respect of—in that some of us cover certain areas more often than others do. It so happens that the customer list falls that way. As far as the house is concerned, if they feel that they were having an account that they want

us to call on, they would try to pick the area where
1894 we are the heaviest and the account is the easiest for
us to get to.

Q. Generally speaking, then, do you roam the entire
city of Baltimore and environs?

A. I would say so. Not in my particular case, but—

Q. Do you personally?

A. I am personally mostly city.

Q. Mostly in the city?

A. I would say 75 percent of my calls are in the city.

Q. Of course it is part of your job to know who your
competitors are, am I correct?

A. That is right.

Q. Mr. Norris yesterday estimated there were about
60 jobbers selling TBA in this area. Would that ring a
bell with you?

A. How many?

Q. About 60?

A. I hardly think it is that many.

Mr. Thompson: I would like to take a shortcut, if I
may, sir. I will hand this witness, with your Honor's
permission, a list, eight and a half pages long, with about
eight names on each page, and ask him to take a pencil
and just tick the names of these companies which he recog-
nizes as TBA jobbers in the Baltimore area. I think that
would be a lot quicker than calling off the list.

May I do that?

1895 Mr. Kelaher: That is agreeable.

Mr. Thompson: I need not have it marked for
identification because when the list has been ticked I will
ask the stenographer to copy it into the record as part
of Mr. Lang's testimony.

Mr. Kelaher: May I ask what the total number of
jobbers would be on that list?

Mr. Thompson: I haven't counted them. I would guess there are 60 to 70.

Mr. Kelaher: Did you ask him to tick off jobbers who sell in his territory? Is that the idea?

Mr. Thompson: I will ask the stenographer to read the question.

(Question read.)

1896 Mr. Kelaher; What is your definition of a TBA jobber? What does the list purport to be in the first place?

The Witness: I notice only some of those names you have what we call specialty houses who carry nothing but tires and batteries, and then you have one or two houses there such as Parks and Hull, who are strictly legal, which we term specialty houses. R. J. Loock of course covers a lot of actually TBA items. The houses I checked off there to my knowledge are ones that sell practically the same as we do.

Mr. Thompson: That is what I wanted.

Now I will ask on that basis to have the stenographer copy the list into the record.

Hearing Examiner Kolb: Very well.

(The checked list of TBA Wholesalers in Atlantic Refining Company's Baltimore District is as follows:)

Ancor-Salawitch, Inc., 3100 Washington Boulevard, Baltimore, Maryland.

B-B Auto Supply Co., 335 N. Gay Street, Baltimore, Maryland.

Baltimore Auto Supply, 3515 Dolefield Avenue, Baltimore, Maryland.

Baltimore Gas Light Co., 341 N. Calvert Street, Baltimore, Maryland.

Bearings Service Co., 11 Liberty Street, Westminster, Maryland.

H. R. Boyd, 1202 Maryland Avenue, Baltimore, Maryland.

1897 Brooks Huff Co., 4122 W. Belvedere Avenue, Baltimore, Maryland.

Capitol Auto Parts, 3635 S. Hanover Street, Baltimore, Maryland.

Cleaning Supply and Auto Equipment Co., 6104 Belair Road, Baltimore 6, Maryland.

Comis Auto Supply, 1351 S. Clinton Street, Baltimore, Maryland.

Ditch, Bowers & Taylor, Inc., North & Mt. Royal Avenue, Baltimore 17, Maryland.

F & L Auto Supply, 901 York Road, Towson, Maryland.

Federal Auto Parts, 1301 Light Street, Baltimore, Maryland.

General Machinery and Supply Co., 411 E. Lombard Street, Baltimore 2, Maryland.

Glenmore Motors Co., 6400 Harford Road, Baltimore, Maryland.

B. F. Goodrich Store, 1266 E. North Avenue, Baltimore, Maryland.

Goodyear Service Store, Mt. Royal Avenue & Oliver Street, Baltimore, Maryland.

Holly Auto Supply, Lock Raven Boulevard, Baltimore, Maryland.

J. R. Hunt, St. Paul and Calvert Streets, Baltimore, Maryland.

K & S Auto Supply, 3301 Clark Lane, Baltimore, Maryland.

H. E. Kilner Co., 2840 N. Calvert Street, Baltimore 18, Maryland.

Kitz Motor Co., 3237-39 E. Baltimore Street, Baltimore 24, Maryland.

Kunkel Service Co., Bel-Air, Baltimore, Maryland.

Liberty Auto Supply (Tire Co.), 2346 E. Fayette Street, Baltimore, Maryland.

R. J. Loock Co., 346 N. Gay Street, Baltimore, Maryland.
Marsheek Auto Parts, Inc., 6226 Holabird Avenue, Dundalk, Maryland.

Martin Auto Supply, 1855 W. Pratt Street, Baltimore, Maryland.

Mazer Bros., Eastern Avenue, Essex, Maryland.

Mazer Bros. Auto Parts & Equipment Co., 915 York Road, Towson 4, Maryland.

Monarch Products, 5519 Reisterstown Road, Baltimore, Maryland.

R. W. Norris Co., 330 N. Gay Street, Baltimore, Maryland.

North Port Automotive, Inc., 2817 North Point Road, Dundalk, Maryland.

Parks and Hull Co., Cathedral Street, Baltimore, Maryland.

Stuart Pressley, U. S. #1, Elkridge, Maryland.

Quaker City, 2930 Remington Avenue, Baltimore, Maryland.

Replacement Parts Service, Inc., 41-45 W. Oliver Street, Baltimore 1, Maryland.

Roper & Neagley Co., 1515 N. Fulton Avenue, Baltimore, Maryland.

Salvo Auto Parts, 14 Back River Neck Road, Baltimore, Maryland.

Service Parts Co., 2230 Reisterstown Road, Baltimore, Maryland.

1900 By Mr. Thompson:

Q. You have checked approximately how many houses, Mr. Lang? Would you mind making a rough count?

A. Thirty-nine.

Q. The Loock Company is by no means the only jobber in this area which distributes Mansfield tires, is it?

A. No, sir, they are not.

Q. There are others?

A. Yes, sir.

Q. If I remember your testimony correctly, you distribute Autolite batteries?

A. Yes.

Q. Are there not a large number of other Autolite battery distributors in the Baltimore area?

A. I wouldn't say a large number. There are actually three houses distributing Autolite batteries. There are two other than ourselves.

Q. And those are Boyd, International Harvester, and Service Parts?

A. That is correct. We don't include International Harvester. They service a different trade.

Q. I was interested in noting on the list that you checked that you omitted checking Best Battery Company. Have you ever heard of that company?

A. I have not, no, sir.

1901 Q. Gates fan belts and other Gates products are distributed, are they not, by a very large number of distributors?

A. Yes, I would say approximately seven.

Q. The same would be true with respect to Champion Spark Plugs?

A. Yes.

Q. And certainly Fram and Purolator have a number of distributors in this area, have they not?

A. Yes.

Q. Isn't that so, sir, with respect to substantially all of the accessories carried by your house?

A. Yes. We have nothing exclusive.

Q. When you spoke of the eight Atlantic stations which had formerly been solicited by you, did you include the McKaig station, Bill's station, and the L&S station as three of the eight?

A. That's right. Yes.

Q. Could you now recall, sir, the names of the other five that you formerly solicited?

A. It is going to be pretty hard.

Q. Can you remember any of them?

A. There was an Atlantic station I used to solicit around Orleans Street, I can't remember the name, which has since changed operators.

Q. At the present time I think I understood you 1902 to say that you are only personally soliciting one Atlantic account?

A. Yes, sir.

Q. Which station is that?

A. Al Miskiel.

Q. At Harford and Bayonne?

A. Yes.

Q. Are you pretty familiar with that station, Mr. Lang?

A. Well, I have called on Al for a number of years. I would say fairly so.

Q. Do you know who his other suppliers are?

A. Well, he buys—the only other one that I know that goes in there, to my knowledge, is Quaker City.

Q. I have a note of Quaker City. How about Cleaning Supply Company? Doesn't he buy chemicals from Cleaning Supply Company?

A. I don't know. He never told me so.

Q. Don't you also call on Mr. Sullivan's Atlantic station at 34th and Keswick?

A. Yes, I do.

Q. So that is two at the present time?

A. That slipped my mind.

Q. I wonder if I could ask you this question: Is there some arrangement among you gentlemen who sell for Loock that the Atlantic stations are called on by a Mr. Snowman?

A. No. We have no arrangement whatsoever.

1903 Q. He is one of your salesman?

A. That is correct.

Q. Does he, to your knowledge, call upon a large number of Atlantic accounts?

A. I don't know whether he called on a large number. I am sure he probably contacts some of them.

Q. Do I take it that your personal knowledge of the Atlantic stations is limited to the eight to which you have testified, and the two which you are now currently soliciting?

A. I would say so, yes.

Q. Do you carry in your head, because of your long experience with the company, the names of additional Atlantic accounts which are sold by other salesmen?

A. No. I am not familiar with what the—who the other salesmen call on. Only if they are apt to be mentioned at the store or counter at the time I am there. That would be the only knowledge that I would have.

Q. I think you estimated that in what you call your sales territory there were fifteen or twenty Atlantic stations?

A. That is correct.

Q. You subsequently defined that territory as being substantially all of metropolitan Baltimore?

A. I would say the biggest percentage of it.

Q. Is that not true, sir, that substantially all of those accounts are Loock customers?

1904 A. I wouldn't say that was true, no, sir. I don't know.

Q. Aren't most of them?

A. I couldn't answer that either. I don't know.

Q. You did mention a conversation that you had with a Mr. McKaig. Do you recall that?

A. Yes.

Q. His station was and still is at 4420 York Road?

A. That is correct.

Q. That is the correct station, is it?

A. Yes.

Q. You had the conversation to which you testified at that station?

A. At that particular time, yes. I no longer contact the account, though.

Q. Do you still see that station?

A. It is still there, yes.

Q. Would you mind telling us the background, the circumstances which led up to the conversation that you had with Mr. McKaig?

A. Well, at the time I contacted Mr. McKaig we—in fact, Mr. McKaig was introduced to me by another customer, and at that particular time Mr. McKaig stated to me that the majority of his purchases were from Firestone, and that he would fill-in if necessary on whatever I could offer him or whatever he could fill in.

1905 Q. Is that the sum and substance of the conversation?

A. That is generally how it went, yes.

Q. And that is about all he said?

A. That is all.

Q. At the time you had the conversation, were you at the station?

A. It was in the station, that is correct.

Q. Is it not true that Mr. McKaig was then and for many years previously had been, and ever since has been, a Lee Tire dealer?

A. That I couldn't answer. I don't know.

Q. You do recall, sir, don't you, the Lee sign on Mr. McKaig's station?

A. I have never noticed it.

Q. Take a look the next time you go by.

A. I sure will. I live out there and I have never noticed it.

Q. Let's shift to batteries for a moment. Is it not true that Mr. McKaig, at the time you had the conversation, was actually stocking Bowers batteries?

A. He had some Bowers batteries, that is correct.

Q. And that he was handling Purolator oil filters?

A. At one time, that's right.

Q. And that was at the time you had the conversation, wasn't it?

1906 A. No. He had Fram at that time.

Q. Wasn't he then carrying Purolator?

A. No, sir, he was not.

Q. Do you know that he is now carrying Purolator?

A. He probably does. I haven't contacted Mr. McKaig for over a year. I don't make any money off accounts of that type, so I can't call on them every week.

Q. But somebody must.

A. Apparently they do, but I am sure it is not a jobber-salesman.

Q. Then I wonder who would be selling the Lee line?

A. That could be Lee Tire and Rubber Company.

Q. How about the Bowers Company, the same thing? Bowers Company?

A. Bowers batteries.

Q. How about the Purolator; would that be the Purolator Company?

A. It could be.

Q. They have a lot of distributors, three in this area?

A. That is correct.

Q. Do any of them make direct sales?

A. I don't know.

Q. Any of those three manufacturers, do they make direct sales?

A. Not directly to the station. It must come from 1907 the distributor.

Q. So they all come from distributors?

A. I would say mostly jobbers.

Q. Let's shift to Bill's. I don't know where you said that station was.

A. Dundalk.

Q. That is 909 Dundalk Avenue?

A. That's right.

Q. And the conversation that you had with Bill, whose real name is William Batchelor—B-a-t-c-h-e-l-o-r—

A. That's right.

Q. —was, as I recall, the latter part of 1955?

A. I think so.

Q. And the conversation was held at the station?

A. That's right.

Q. You observed the station when you were there?

A. Fairly well.

Q. You had sold the station, hadn't you?

A. Sir?

Q. You sold the station, hadn't you?

A. I had, yes.

Q. Let me ask you this: Is it not true that when you were at the station Bill was stocking Goodyear and Goodrich tires?

A. He may have. Tires are not our major line. We are not a tire house. I don't attempt to even get into the tire field.

1908 Q. I understand that of course, sir. But now let's go back to the conversation that you had with Bill, because, as I recall it, something was said about his feeling obligated to buy Firestone. Is that correct?

A. That is what he told me.

Q. You don't think that was the brush-off, do you?

A. Well, it is two schools of thought on that.

Q. Is it not also a fact that at that time, before the time of your conversation that day, the principal accessories supplier of Bill is Marsheck Auto Parts Company?

A. Marsheck is in that vicinity.. Whether he is made a supplier, I couldn't answer that.

Q. You do know, don't you, that Bill buys from Marsheck?

A. He may. I don't know for sure.

Q. Let's get to the third one on your list, L&S station. The conversation to which you referred was in 1953, was it not?

A. Yes.

Q. Do you know how long the L&S partnership, Lewis and Loefer was with him, stayed at that station?

A. They didn't stay very long. I don't know the exact time or period because I am not familiar with that.

Q. It was really just a couple of months?

A. I think it was. I am not sure. I think it was.

Q. You made a kind of a general statement, as I recall it, that you were unable to place competitive signs 1909 of Atlantic stations, Looek signs?

A. Not exactly Looek signs but—

Q. The brand names that you carry.

A. Brand names, yes.

1910 Q. Did you personally ever try to persuade an Atlantic lessee to permit you to put a sign in his station? I am talking about personally.

A. Yes. I have mentioned it to several of them and there have been occasions where we had I think DuPont transparent signs that were put up at one time several years ago. And I happened to be in the station at the time that the operator put them up. And the following week when I returned the signs were down.

Q. Can you remember the name of that station?

A. This has been quite some time back and I don't recall the name.

Q. Upon what was your general statement made about signs? Was it something somebody told you or what?

A. Well, it came from the operator himself.

Q. But then I would ask you to be more definite and name every operator who made any such statement to you. Having rather full records here, I can check to see whether or not the competitive signs are there or not.

A. I wouldn't be in a position to go that far back. My memory isn't that good.

Q. Can you remember the names of any of them?

A. I can't remember any of them at the time. It has been around 1954 or '55.

Mr. Thompson: Thank you very much. That is all.

1912 Hearing Examiner Kolb: Thank you, Mr. Lang.

(Witness excused.)

(Discussion off the record.)

1913 Hearing Examiner Kolb: The hearing will be in order.

EDGAR D. FREELAND, JR. was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Would you please state your name?

A. Edgar D. Freeland, Jr., 10 Cedar Road, Catonsville 28, Maryland.

Q. Are you an employee of R. J. Loock Company?

A. I am.

Q. How long have you been with that company?

A. Since 1949.

Q. Are you an outside salesman with that company?

A. I am.

Q. Over what period have you been an outside salesman?

A. The entire period.

1926 Mr. Correa: I have no further questions.

Mr. Ballard: I have no questions, your Honor. I hope the usual objection will be noted on the record.

Hearing Examiner Kolb: Yes. It is received subject to a motion to strike as to matters involving other oil companies.

Mr. Kelaher: No questions, your Honor.

1928 Hearing Examiner Kolb: The hearing will be in order.

LEWIS A. HUETHER was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kaplan.

Q. Would you please state your name and home address?

A. Lewis A. Huether, 400 North Lakewood Avenue, Baltimore 24.

Q. Mr. Huether, are you employed by R. W. Norris and Sons, Inc.?

A. Yes.

Q. In what capacity are you employed?

A. Representative.

Q. How long have you been a representative with that company?

A. Since 1920.

Q. Since 1920?

A. About 36 or 37 years. I have been employed with them longer than that.

Q. How long have you been employed by that company?

A. Since 1914.

Q. How long have you been an outside salesman 1929 with that company?

A. How long? Since 1920.

Q. What has been your territory?

A. Baltimore city and a portion of Baltimore County.

Q. Mr. Huether, how many Atlantic service stations are in your territory, would you say?

A. I don't know. Twenty or twenty-five. Fifteen, twenty, twenty-five in the whole territory.

Q. Do you solicit any Atlantic stations?

A. Just one now, and that is for antifreeze.

Q. Was there ever a time when you did solicit Atlantic stations?

A. Oh, yes. Way back a good many years ago.

Q. How long ago would you say that was?

A. I guess fifteen years ago.

Q. When did you stop soliciting Atlantic service stations?

A. About that time. Competition from the companies got too strong on me and there wasn't any use of me calling—the oil companies.

Mr. Ballard: I move to strike the answer, beginning with "competition", as not being responsive to the question.

Hearing Examiner Kolb: Motion denied.

Mr. Mason: We have our motion to strike on the ground that this does not relate to Goodyear.

Hearing Examiner Kolb: Yes.

1930 The testimony will be received subject to a motion to strike by Goodyear as to that portion pertaining to other Auto supply companies.

By Mr. Kaplan:

1965 (Hearing Examiner Kolb: You are excused.

(The witness was excused.)

Hearing Examiner Kolb: Let the record show that Respondent's Exhibit G-5 has been withdrawn.

(Whereupon, Respondent's Exhibit G-5 for identification was withdrawn.)

Mr. Kelaher: May we have a short recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

JOSEPH SCHEINER was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Joseph Scheiner, 3605 Woodlea Avenue, Baltimore 14.

Q. And are you associated with the S&S Tire Company?

A. The S&S Tire Company is a corporation. I am the president of it.

Q. What is the business of the S&S Tire Company, and what is the present address of the S&S Tire Company?

A. We have a re-cap shop. We sell the re-caps to service stations as well as retail. Also handle new tires

as distributors, and batteries. And we are presently 1966 located at Saratoga and Pearl Streets. Our shop is on Franklinton Road.

Q. What is the address of your shop?

A. Franklinton Road and Harlen Avenue.

Q. Are you an outside salesman for the firm, in addition to your other capacity?

A. I am the only outside salesman for the firm.

Q. What are generally the boundaries of your sales territory?

A. Baltimore and its environs, to Essex and Dondalk.

Q. Were you at one time a distributor of Firestone tires?

A. Yes, in October 1951. We took on an order of Firestone tires, mainly because we had an Atlantic service station and Atlantic tied up with them.

Q. Approximately—

A. Before that we handled Lee tires.

Q. Approximately, what was the amount of your tire purchases from Firestone at that time?

A. Just over \$3,000.

Q. In addition to the Atlantic station you referred to, were you also doing business as S&S Tire Company at that time?

A. Yes, we were.

Q. Were you at that time soliciting Atlantic and other service stations in your marketing area?

A. I should say Atlantic and all other major oil companies.

Q. After you purchased the Firestone tires in 1967 October 1951, did you begin to solicit Atlantic service stations and all other stations in the area?

A. Well, I didn't just begin at that time. I had been already and I just continued.

Q. As to Firestone tires?

A. Yes, sir.

Q. Did you have any discussions—

Mr. Thompson: I didn't understand the last question and answer.

Hearing Examiner Kolb: Read the question and answer.

(Question and answer read.)

By Mr. Kelaher:

Q. By that do you mean at that time you started selling Firestone tires?

A. Firestone tires.

Q. Prior to that time you were soliciting another brand?

A. Recapping and another brand of tires and batteries.

Q. I believe you did testify that the brand you were carrying before that was Lee, is that correct?

A. Yes.

Q. After October 1951 did you have any conversations with Firestone representatives concerning your sale of Firestone tires?

A. I would say a couple of months later the Firestone salesman told me he had become aware of my calling 1968 on Atlantic * * * as well as other service stations—well, he wasn't concerned with the others—

Mr. Thompson: If your Honor please, I wonder if I may look at the documents the witness seems to be reading from.

The Witness: It is nothing here.

(Handing documents.)

Mr. Thompson: Thank you very much.

The Witness: What was the question?

(Question read.)

The Witness: —soliciting their business on Firestone tires. He told me that in view of the Firestone contracts with Atlantic * * * he didn't feel that I should call on them to solicit their business.

By Mr. Kelaher:

Q. That was the extent of the conversation?

A. That was the gist of it.

Mr. Correa: I am sorry, I wanted to get in before that last question a motion to strike the testimony of this witness at this point in so far as it relates to Firestone-Atlantic, and also on the independent ground in so far as it relates to Firestone-Shell, two strangers to this proceeding.

Hearing Examiner Kolb: The motion will be denied. The evidence will be received subject to a motion to strike by Goodyear.

1969 By Mr. Kelaher:

Q. What brand of batteries do you currently handle—new batteries?

A. Bowers.

Mr. Thompson: Mr. Kelaher, unless you are going to proceed further and identify the Firestone salesman about whom you were talking, I move to strike that part of the testimony because it is not sufficiently specific to meet the standards set up in this proceeding.

Hearing Examiner Kolb: Can you identify the salesman?

The Witness: I don't remember his name. I looked up the bill, but Firestone doesn't seem to think enough to put his name on that bill.

By Mr. Kelaher:

Q. Was he the Firestone salesman with whom you had contacts at that time?

A. Yes. The district office salesman.

Q. Was he from the Baltimore district office?

A. Baltimore district office.

Q. Of Firestone Tire and Rubber Company?

A. Yes.

Q. Where did the conversation take place?

A. At our location. At that time we were at 630 North Franklinton Road, at the Atlantic station.

1970 Q. And I think you stated the approximate time.

Would you give us the approximate time of the conversation again?

A. I would guess about—I would say about two and a half months after I bought the tires in October.

Mr. Thompson: I renew my motion to strike on the grounds it is impossible for Atlantic Refining Company, respondent in this case, to identify the salesman of a non-respondent about whom this witness is talking.

Hearing Examiner Kolb: Was this conversation with Atlantic?

Mr. Kelaher: This conversation was with a Firestone representative. At the time Firestone had, as the record will show, a sales commission plan agreement with the Atlantic service stations.

Hearing Examiner Kolb: The objection will be overruled.

Mr. Thompson: You understand the basis for my objection, sir. I think I have made it clear.

Hearing Examiner Kolb: They can determine who the local salesman was at that time in this particular locality if that becomes necessary.

Mr. Thompson: But Firestone is not a respondent in this case.

Hearing Examiner Kolb: But Atlantic is.

Mr. Thompson: Yes, sir.

1971 Hearing Examiner Kolb: All right.

By Mr. Kelaher:

1983 Q. Did you at one time call on a Mr. Gabriel Tydings, an Atlantic dealer, at Clifton and Denison Streets in Baltimore?

A. Yes.

Q. During what period did you solicit tire and 1984 battery business from Mr. Tydings?

A. I guess that was during 1953 and 1954.

Q. Did you have any conversations with Mr. Tydings during that period concerning his purchases of TBA from you?

Mr. Thompson: Could we have the location of the station?

Mr. Kelaher: I gave it. Clifton and Denison Streets, Baltimore.

The Witness: Yes, from time to time he and I had conversations regarding TBA.

By Mr. Kelaher:

Q. Did these conversations take place during the period that you just mentioned, 1952-53, or whatever you mentioned?

A. I did business with Tydings, I guess, for about four or five years.

Q. Beginning when?

A. It could have been as early as 1951. In fact, it was.

Q. What brand of tires and batteries were you handling during this period when you were soliciting tire and battery business from Mr. Tydings?

A. I had both Lee and Firestone tires, and Lee and Bowers batteries.

Q. Did you have any conversations with Mr. Tydings during that period 1951 and four years thereafter? Four or five years thereafter?

1985 A. Yes. He told me that he—

Mr. Thompson: Wait a minute.

By Mr. Kelaher:

Q. Just say Yes or No.

A. Yes, period.

Q. Please tell us the substance of your conversation. First let's fix the approximate date of the conversations. If there were more than one, so state.

A. I would say about the summer of 1954 he told me that he couldn't—he wouldn't be able to—

Q. What did he tell you at that time?

A. He told me—

Mr. Thompson: Could we have the place and the usual specificity?

By Mr. Kelaher:

Q. Where did this conversation take place in the summer of 1954?

A. At Tydings' location, at his station at Clifton and Denison.

Q. Now, state to the best of your knowledge the conversation that took place between you and Mr. Tydings.

A. He said he would no longer be able to buy merchandise from me; that this Atlantic salesman was applying pressure; that he would have to stock merchandise bought from them only.

1986 Q. What brand of merchandise was that?

A. Firestone tires and batteries. I think the battery line was.

Q. You, at that time, were handling Firestone tires, also, you testified, is that correct?

A. Yes.

Mr. Correa: I make the usual motion with respect to this testimony on behalf of Goodyear.

Hearing Examiner Kolb: It will be received, subject to a motion to strike by Goodyear.

By Mr. Kelaher:

Q. From whom did he purchase his Firestone tires and batteries? Who was his supplier of Firestone tires and batteries other than you?

Mr. Thompson: If you know, of course.

By Mr. Kelaher:

Q. If you know.

A. Atlantic. Do you want to name the—

Q. The supplier.

A. The supplier for Atlantic was Johnson—

Mr. Thompson: Do you know from whom this particular man bought? That is the question.

The Witness: Wait a minute. Johnson didn't handle Firestone. So all I know is Atlantic.

1987 By Mr. Kelaher:

Q. Are there Firestone stores in Baltimore?

A. Yes, sir.

By Mr. Kelaher:

Q. Up to this time, at the time of this conversation, what products were you selling to Mr. Tydings?

A. I was selling him Lee tires, Vanderbilt tires, Lee and Bowers batteries.

Q. Had you been able to sell Firestone tires to him?

A. Yes, we sold a few to him.

Q. After this conversation did your volume of sales increase, decrease or remain the same with respect to sales of tires and batteries to Mr. Tydings?

A. My sales went down with Tydings.

Mr. Kelaher: No further questions, your Honor.

Mr. Correa: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: We will recess until 1:30.

(Thereupon, at 12:46, the hearing was recessed, to reconvene at 1:30, this day.)

1988

Afternoon Session.

(1:45 p. m.)

Hearing Examiner Kolb: The hearing will come to order.

JOSEPH E. SCHEINER resumed the stand and, having been previously duly sworn, testified as follows:

Cross-Examination by Mr. Correa.

Q. Mr. Scheiner, you have told us you have a recapping business?

A. Yes, sir.

Q. And that you also distribute tires and batteries?

A. Yes.

Q. And do you also have a service station business?

A. Yes.

Q. What gasoline do you pump?

A. We formerly had Atlantic. Now we have Crown.

Q. How many employees do you have?

A. Right now there are four. There were five at that time.

Q. Which time?

A. During the period covered by this inquiry.

Q. What period do you have in mind?

A. Up until two and a half years ago.

1989 Q. Two and a half years ago. And in the last two and a half years you have had four employees, is that right?

A. That's right.

Q. Is that in your whole operation, station and recapping?

A. We don't do much station work.

Q. How many of your people are employed in the recapping work?

A. Two.

Q. How much recapping plant do you have?

A. We have four molds. Four recapping molds, two vulcanizing molds, two spotters.

Q. How many men do you have engaged in that work?

A. Two.

Q. Do you have a man to look after your pumps?

A. Yes. One man.

Q. What does your fourth man do?

A. I am he.

Q. And you do—

A. Outside.

Q. Outside work?

A. Yes.

Q. Do you solicit recapping business?

A. Yes.

Q. And you sell tires and you sell batteries?

A. Yes.

1990 Q. What part of your business, in terms of let's say your annual dollar volume, is in recapping?

A. About thirty to—around thirty thousand.

Q. I was thinking more of a percentage than I was of an absolute figure.

A. About—I guess it would run around 65 to 70 percent. It would be more than \$30,000.

Q. What part of your business, percentage-wise, would be in your pumping operation, or service station operation, let's say?

A. Maybe ten percent.

Q. And the remaining twenty percent would be—

A. In new tires and batteries.

Q. —in new tires and batteries?

A. Yes.

Q. That activity is carried on principally by yourself?

A. Yes.

Q. Do you operate a truck?

A. Yes.

Q. One truck or more than one?

A. One. I handle one that I—it is a station wagon.

Q. And you drive that yourself?

A. I drive that. And I have a pickup truck in addition to that. One of the fellows in the shop uses that for quick deliveries and pickups.

1991 Q. You spoke of selling to service station dealers on a stocking basis?

A. Yes.

Q. Is it correct, sir, that nowadays at least—by “nowadays” I mean post-World War II, really—most service stations order TBA merchandise pretty much from week to week on a basis of keeping their inventory up to whatever size they have in mind as the proper inventory of the particular item involved?

A. Well, it varies according to the operator, I would say. Some of the smaller fellows won’t stock any tires, new tires.

Q. They just don’t stock at all?

A. Some won’t.

Q. Those—

A. They don’t have the money in lots of cases.

Q. Those fellows, I take it, pretty much buy tires on a spot basis as they have need for them?

A. Yes. Of course there are others who stock considerably.

Q. What would you say the average is?

A. It runs from nothing all the way up. There is no limit.

Q. What would you say the average is?

A. Esso dealers buy in lots of a hundred tires at a time, under their setup.

Q. Hasn't the—

A. Others less.

1992 Q. What I was getting at was this: Having the stocking habits, if we may call them that, of service stations, been affected by the introduction after World War II of these wagon peddlers, I believed they are called in the trade?

A. I see a number of them around. I wasn't in it before the war.

Q. As a matter of fact, they are a part of your competition, aren't they?

A. They handle mostly accessories, which I don't go into. None of them handle new tires that I know of. I don't know of any of them handling batteries. And recapping, none of them do.

Q. I wasn't including or thinking of recapping in this connection. You don't know of any wagon peddlers who deal in batteries?

A. I don't know of any.

1993 Q. Do you extend credit terms to any of your customers for tires or batteries?

A. Some few. Not many.

Q. Generally—

A. COD almost to everybody.

Q. Generally you deal on a COD basis?

A. Yes.

Q. Do you generally make the sale and delivery of the goods at the same time?

A. No. I will take the order and deliver later. Next day usually, if it is a stock item.

1995 Hearing Examiner Kolb: Any questions, Mr. Thompson?

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: Proceed.

By Mr. Thompson:

Q. Mr. Scheiner, you have a number of business enterprises, haven't you, sir?

A. What are you referring to?

Q. Until 1955 didn't you own a bottling company?

A. Yes.

Q. Also, during the same period, weren't you a partner in a store enterprise? Grocery store?

A. Not during the same period.

Q. Not during the same period, but you are at the present time?

1996 A. No.

Mr. Kelaher: Your Honor, Mr. Thompson has asked me to fix dates throughout our examination. I think maybe we should have some dates fixed as to this bottling plant.

Mr. Thompson: The date was fixed, Mr. Kelaher. I will ask it more specifically.

By Mr. Thompson:

Q. You sold the bottling plant in 1955, about that time?

A. During 1955.

Q. Then didn't you go into the store business after that?

A. No, I was never in the store business.

Q. Never?

A. That is, after that.

Q. When were you in the store business?

A. One of my partners bought the store.

Q. So that you personally had no interest in it?

A. That's right.

Q. As I recall your testimony, you were an Atlantic lessee at 630 North Franklinton Road?

A. Yes, sir.

Q. You had that station under lease from Atlantic for about ten years, did you not?

A. About, just about.

Q. From 1946 until the end of 1955?

A. Yes.

1997 Q. During that period was that Atlantic station your business headquarters?

A. I would say better than fifty percent of my time. At least fifty percent.

Q. Is that the point from which you operated your tire and battery distributor business?

A. Yes, sir.

Q. And also your recapping business?

A. Yes, sir.

Q. You mentioned on your direct that before 1951 you had been a Lee dealer?

A. Yes.

Q. As a matter of fact, you continued to be a Lee dealer—

A. We are still friendly with Lee.

Q. I didn't finish my question, sir.

A. All right.

Q. You continued to be a Lee dealer throughout the period of your lease with Atlantic Refining, didn't you?

A. Yes, sir.

Q. The station at North Franklinton Road during all of your tenancy had a Lee sign on it, did it not?

A. Yes.

Q. You were also, I think, a distributor for Vanderbilt tires?

A. Yes.

1998 Vanderbilt, by the way, is one of the Dunlop brand names, is it not?

A. Yes, sir.

Q. You also had a Vanderbilt sign on your Atlantic property, did you not?

A. I don't think so. I don't remember it.

Q. You were selling, in addition to Lee batteries, also Bowers batteries, were you not?

A. Yes.

Q. And you did have a quite large Bowers sign on the property, did you not?

A. We had a Bowers sign displayed.

Q. And those signs were displayed throughout the entire tenancy?

A. Yes.

Q. Confining my questions at the moment to the Atlantic station at North Franklinton Road, what brands of tires did you sell at retail to your customers at the station?

A. Whatever we had on hand—Firestone, Lee, or any other brand.

Q. Primarily Lee, wasn't it, at the station?

A. I wouldn't say so.

Q. Which did you find the best brand from the point of view of customer acceptance?

Mr. Kelaker: Objection, your Honor.

1999 Hearing Examiner Kolb: I don't think that is material. I will sustain the objection.

Mr. Thompson: I think it is very material, sir. Here is a man who is offering four brands of tires at his station. I would like to know which one he found—

Hearing Examiner Kolb: Suppose one or the other has a better acceptance. What has that to do with the proceedings in this case?

Mr. Thompson: I shall argue that point in my brief.

If your Honor doesn't think it is relevant, I will withdraw the question.

Hearing Examiner Kolb: I don't think it is relevant.

Mr. Thompson: I think it is relevant.

Hearing Examiner Kolb: All right. I will let the witness answer.

The Witness: Frankly, I paid little attention to retail sales. That was up to the man inside to push whatever we wanted to get rid of.

By Mr. Thompson:

Q. Do you mean your employees handled the sales at the station?

A. Yes.

Q. At that station you sold Bowers batteries at retail to your customers, didn't you?

A. Yes.

2000 Q. And also Lee batteries?

A. No.

Q. No Firestone, either?

A. I don't think we ever handled Firestone batteries.

2001 Q. I am not now talking about your wholesale business but didn't you sell accessories at retail at the Atlantic station?

A. Yes, we did.

Q. And there was never at any time any Firestone accessories, were there?

A. No. That was part of our understanding when we took it over, that we would not allow Atlantic to pressure us regarding anything we sold.

Q. And they never did, did they?

A. No, sir—Yes.

Q. Tell us about it.

A. After we took on the Firestone line, Claude Bishop told me in his office—

Q. Who is that?

A. Claude Bishop, the manager at that time.

Q. The manager of whom?

A. The local manager for Atlantic. He asked me to stop selling to Atlantic stations; stop selling Firestone tires to Atlantic stations. As far as pressure at the station was concerned, he never tried to apply any.

Q. As a matter of fact, for retail use at your station you never really bought any Firestone, did you, during the entire time that you were lessee of Atlantic?

A. We bought Firestone tires. Does that answer it?

We bought Firestone tires.

2002 Q. For sale at the station or for distribution to other service stations?

A. Does it matter whether we bought them for—why should we differentiate between what we sell at retail or wholesale?

Q. Sir, if you will just be kind enough to answer the question—

A. We never felt that—

Q. I would be delighted. You never did sell Firestone tires at retail at the station, did you?

A. We sold some.

Q. Very few?

A. I would say less than Lee.

Q. Who was your Atlantic salesman at your station?

A. The first man I remember is Ehrlich. This gentleman over here was a salesman at one time.

Q. Do you mean Mr. Duckworth?

A. Mr. Duckworth was at one time.

Q. Was Mr. Lou Miller ever your salesman? Do you remember him?

A. Lou Miller?

Q. Yes.

A. I remember the name, yes.

Q. During the period 1951 to '55 wasn't Lou Miller your salesman?

A. Very likely was.

2003. Q. And then he was succeeded by Mr. Duckworth?

A. That is very likely true.

Q. How familiar are you with the Clifton and Dennison Station which you referred to this morning as the Tydings Station?

A. I know there has been—for a while there was a partnership. Now, Tydings is out. Does that answer your question?

Q. In part. You testified, as I recall your direct, that you sold Mr. Tydings at that station beginning in 1951 for a period of about five years?

A. We did, but I wouldn't say the beginning of 1951 for five years. I don't know. I would say we sold him for about five years. I don't remember when we began—

Q. What—

A. To be exact.

Q. What products did you sell Mr. Tydings during the period you were selling that station?

A. We sold him, as I stated before, Firestone and Lee tires, Lee and Bowers batteries, at one time or another.

Q. Do you know when Mr. Tydings became the leasee of that station?

A. I know it was after Joe—

Q. Perhaps, I could refresh your recollection. Was it about January, 1951?

Mr. Kelaher: Just a moment. What is the pending question? I didn't catch Mr. Thompson's question.

2004 Mr. Thompson: When Mr. Tydings became a leasee of the station at Clifton and Dennison.

By Mr. Thompson:

Q. About January 1951?

A. It sounds about right.

Q. Do you recall that Mr. Tydings gave up his lease and left that station in 1953?

A. You may be right.

Q. Do you recall that?

A. I remember that he went out. He went into a partnership with Wells before he left, and then Wells took over completely. As far as the number of years that he was in there, five years may be too long.

Q. Would it refresh your recollection if I suggested to you that the partnership with Mr. Wells was formed about January 1, 1954, and that the two men went back to the station together at that time?

A. I didn't know Wells was a partner before 1951. Is that what you said?

Q. I said 1954.

A. I know that they were partners around that time, yes.

Q. Then, you know that Mr. Tydings dissolved the partnership and left the service station business.

A. I know he did.

Q. About when would you say that was?

2005 A. I would say it was just under a year after they formed the partnership. Just less than a year, I think.

Q. Sometime in 1954?

A. Yes.

Q. You testified this morning to a conversation that you had with Mr. Tydings. I wonder if you could a little more accurately place the date of that conversation?

A. Well, it was before the partnership was—it was before the partnership went into effect, when Tydings was

operating with his son, which would place it very likely in 1953.

Q. And about what time of year was it?

A. I would say in the fall.

Q. In the fall of 1953?

A. Fall of 1953.

Q. I thought we had established that in the fall of 1953 Mr. Tydings wasn't in the service station business at all; that he had left the station. Are you sure it isn't Mr. Wells you had talked to or somebody else?

A. No. It was Tydings.

Mr. Kelaher: Your Honor, I suggest that that question is not in accord with Mr. Thompson's chronological history, as I understand it. I think it is an unfair and improper question.

Hearing Examiner Kolb: The objection will be overruled.

2006 By Mr. Thompson:

Q. Do you actually have a recollection of this conversation? Can you picture in your mind?

A. Yes. I know that several times, we had several conversations.

Q. I am now referring to the conversation about which you testified this morning. I would like you to tell us the circumstances that led up to this a little more fully, precisely what was said by both of you.

A. He said he had been—

Q. No, the circumstances that led up to it. Did you go to see him to solicit or what?

A. Yes. I made regular calls on him. At least once a week. And during one of my regular calls I asked him about filling in what he had sold. He said he wouldn't be able to, that his salesman had gotten after him about stocking.

Q. Do you know who his salesman was?

A. I don't remember who he was. It could have been Lou Miller.

Q. It was Lou Miller, wasn't it?

A. It could have been.

Q. Your station is fairly close—the Atlantic station which you had is fairly close to what you called the Tydings station.

A. Yes, sir.

Q. Didn't you ever see Mr. Miller at the Tydings station?

2007 A. Yes, I did.

Q. Then, the salesman was Mr. Miller, wasn't it?

A. Yes.

Q. The Tydings salesman was Mr. Miller, wasn't it?

A. Yes.

Mr. Kelaher: Your Honor, has any time been specified? I understand there were a number of salesmen in that area through the years. Mr. Thompson has named some.

The Witness: I think he had a fellow named Reilly at one time, too.

By Mr. Thompson:

Q. I am trying to place the Atlantic salesman at the time of the conversation that you said you had with Mr. Tydings. If you place that conversation in 1953, my specific question is whether Mr. Miller wasn't both your salesman at your own station and Mr. Tydings' station during that year.

Mr. Kelaher: Your Honor, it seems to me that that is a matter of record with the number of salesmen—

Mr. Thompson: I am testing this man's credibility, Mr. Kelaher. Please don't interrupt.

Hearing Examiner Kolb: He can answer if he knows.

Mr. Kelaher: If he knows.

The Witness: Yes, he was.

By Mr. Thompson:

Q. When Mr. Tydings said to you that Miller 2008 was trying to pressure him into buying Firestone or something to that effect—is that about what he said?

A. He said he couldn't stock my merchandise. That was the gist of it.

Q. Who said that?

A. Tydings. Tydings told me that he would have to discontinue stocking my merchandise.

Q. Is that all he said?

A. And if he wanted any, he would have to call on either—either get us to deliver or come down and pick it up himself.

Q. Is that all he said?

A. He said he didn't want to—

Q. In other words, have you repeated the entire conversation?

Mr. Kelaher: Just a minute. He hasn't completed his answer.

The Witness: I don't recall what else you might want me to bring out here.

By Mr. Thompson:

Q. I don't care what you bring out. I am just trying to get the facts, Mr. Scheiner.

Hearing Examiner Kolb: Read the last question to the witness.

(Question read.)

The Witness: He very likely said Atlantic wanted him to handle Firestone from them.

2009 By Mr. Thompson:

Q. Was Atlantic Refining Company to the best of your knowledge the supplier of Firestone to the Tydings station?

A. Yes, I think so.

Q. Was Atlantic Refining Company the supplier of Firestone to your station?

A. No. We were handled-through the district office of Firestone.

Q. Did Mr. Tydings mention who in Atlantic wanted him to handle Firestone? Did he mention Mr. Miller or anybody by name?

A. He might have. I wouldn't say Yes or No. Very likely he was referring to Lou Miller. I wouldn't know for sure anymore.

Q. Did you believe what Mr. Tydings said to you? Or did you think he was giving you the brush-off?

A. I believe him.

Q. In spite of the fact that you had never had any pressure on you at your own Atlantic station by anyone?

2010 Mr. Thompson: May we have about a minute's recess?

Hearing Examiner Kolb: All right.

(A short recess was taken.)

Mr. Thompson: I have no further questions, your Honor.

Mr. Kelaher: I have maybe one or two.

Redirect Examination by Mr. Kelaher.

Q. Mr. Scheiner, in selling Firestone tires to Mr. Tydings, Lee tires and Lee and Bowers batteries, how did your prices compare with those of competitors?

A. I could sell him Firestone tires at just about the same price. I could give a little better price on Lee tires.

Q. Than on Firestone?

A. Yes.

Q. With respect to Lee and Bowers batteries, how did your prices compare with other brands of batteries?

A. They were lower prices. The Lee was about, I would say, around the same.

Q. The same as—

A. The same as Firestone. But Bowers was less.

2011 Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all, Mr. Scheiner. Thank you very much for coming down.

(Witness excused.)

Hearing Examiner Kolb: Let's take a short recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

HOMER/AUGUST SANDER was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Homer August Sander, Bayside Beach, Pasadena, Maryland.

2012 Q. Are you associated with the Bowers Battery and Spark Plug Company?

A. I am the branch manager of the Baltimore division.

Q. How long have you been with the Bowers Battery Company?

A. Since 1949.

Q. Did you begin with Bowers Battery here in Baltimore?

A. In the City of Baltimore as a salesman on the street.

Q. How long did you continue as an outside salesman?

A. To 1952.

Q. In 1952 what duties did you assume?

A. Commercial sales.

Q. When did you become the branch manager?

A. 1954.

Q. When did you cease being an outside salesman altogether?

A. February, 1952.

Q. During the period 1949 to 1952 did you call on trade in the Baltimore metropolitan area?

A. Service stations and garages.

Q. What products does your company sell?

A. Storage batteries.

Q. Do you have a full line, short line, or what type of line?

A. We have a complete line of batteries. Wet and dry storage batteries.

Q. How do the prices on Bowers batteries compare with the prices of other sellers of batteries in the metropolitan Baltimore area?

A. Well, we are much lower than a majority of the brands that are on the market due to our operation.

Q. Is Bowers Battery and Spark Plug Company a manufacturer?

A. We are a manufacturer.

Q. And this is a factory branch?

A. This is a company-operated branch.

Q. During the period 1949 to date has there been an increase, decrease, or has the sales volume remained the same on the sale of Bowers batteries to Atlantic service stations?

Mr. Thompson: That is objected to, your Honor. The record very clearly shows that Atlantic was not on a sales commission plan until sometime in 1951.

By Mr. Kelaher:

Q. I will amend that to 1951 to date. During the period 1951 to date has there been an increase, decrease, or has the sales volume remained the same with respect to the sale of Bowers batteries to Atlantic service stations?

A. There has been a decrease as far as our branch operation is concerned.

Q. I am talking about in the metropolitan Baltimore area?

A. Yes, sir; metropolitan area of Baltimore.

Q. And what has been the percentage of decrease during that period?

2014 A. Taking in general, including all—

Q. I am talking about Atlantic service stations.

A. One hundred percent. We don't have any.

Q. In or about 1951, did Bowers branch sell to any Atlantic service stations in the metropolitan Baltimore area?

A. From 1949 through '51 we did.

Q. Approximately how many, do you recall?

A. I recall five at that time.

Mr. Thompson: I move the answer be stricken because it covers a period when Atlantic was not under the sales commission plan.

Mr. Kelaher: He said through 1951.

Mr. Thompson: Excuse me. He didn't. He said 1949 through '51, didn't you?

The Witness: Yes, sir.

Hearing Examiner Kolb: The objection will be overruled.

Mr. Thompson: Your Honor understands that he is talking about 1949 and 1950?

Hearing Examiner Kolb: I understand he is attempting to show the situation before and after the institution of the sales plan. I think it is proper.

Mr. Thompson: There has been so much confusion I didn't understand. Did he say he had five Atlantic accounts?

The Witness: Approximately five.

2015 By Mr. Kelaher:

2018 By Mr. Thompson:

Q. Mr. Sanders, there is one thing I don't understand about your method of distribution which I am sure was not brought out?

A. All right, sir.

Q. Back in 1949, '50 and '51, had your branch sold direct to service stations?

A. Yes, sir.

Q. Do you sell direct to service stations today?

A. We try to. But we are not having any luck.

Q. How many distributors do you have in the Baltimore area?

A. What do you classify as a distributor.

Q. Jobbers, wholesalers.

A. As far as I can recall, two.

Q. Who are they?

A. Baltimore battery and S&S tire.

Q. How many Atlantic accounts does the Baltimore battery have?

A. I am not familiar with their records.

Q. How many Baltimore accounts—what is the name of the other distributor?

A. S&S tire.

Q. How many do they have?

2019 A.. I don't know. You should ask those gentlemen. They run their business and I run mine.

Q. I am asking you questions now and you can just answer them.

Mr. Kelaher: Just answer the questions.

By Mr. Thompson:

Q. Have you any idea how many Atlantic Stations these two distributors have?

A. No, sir, I do not.

Q. You know mighty well it is an awful lot more than five, don't you?

A. They may and they may not: I don't know.

Q. Is thirty about right?

A. I wouldn't know, sir.

Q. Don't you know what your distributors do in this town?

A. No, sir; we have no means of getting to their records.

Mr. Thompson: That is all.

By Mr. Correa:

Following Testimony Taken At Washington
2034 Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: I would like to call Mr. Edwards.

Mr. Correa: Your Honor please, before this witness is sworn, I should like to put this, I hope brief statement, in the record. We have been put on notice of certain facts which indicate to us that if the present plans of counsel supporting the Complaint in this case and in another case are carried through, we will be deprived of a fair hearing within the significance of that term under the Administrative Procedure Act as well as the appropriate authorities defining our right to a fair hearing.

The facts to which I allude are substantially these: As I understand it, this witness and he may be only an example of this procedure, I don't know that, I can only speak of the facts of which I am now on notice officially; this witness, Edwards, is to be called to testify in this case and also this afternoon, I am told, in the Shell-Firestone Case,

also being heard by your Honor as trial examiner on the identical issue in each case, the issue being an issue of fact as to the nature and operation of the Shell-Goodyear Sales Commission Plan, which is that issue in each of these two cases. .

Now it seems to us, if your Honor please, that is the situation which is, if one may call it that, pregnant with error because it seems to us that once this witness 2035 testifies on the identical factual issue in this other case where we are not present, where his testimony is as to us in every technical sense wholly ex parte, as much as if your Honor were to take his testimony in your Honor's Chambers, we have been seriously prejudiced and we feel indeed prejudiced to the point where we have been denied some of the essential prerequisites of a fair hearing as contemplated by Section 7 and 8 of the Administrative Procedures Act.

I have in mind, among other requirements, particularly Section 7, Sub-division C, which reads in part, "Every party shall have a right to present his case by defense of oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts."

Now obviously we can have no cross-examination of this witness as to what testimony he may give on the issue in our case, mind, your Honor, in this other hearing before your Honor this afternoon. And similarly, we have no opportunity—

Hearing Examiner Kolb: (Interposing.) Since you are not a party to the other case, it would not affect you.

Mr. Correa: If your Honor please, with great respect, that is not entirely true. I speak in this brief outline of argument because I am not going to argue the point extensively, as trial examiner, I'm not speaking of your Honor

individually or personally, but simply of the general-
2036 ity of hearing officers or trial examiners and it
seems to me it is completely unrealistic to suppose
that whatever consciousness, and I am sure your Honor
and all the other examiners of this agency bring to their
appointed task the highest possible degree of conscious-
ness, but with whatever consciousness, I do not see how
realistically a trial examiner can so compartmentalize his
mind as to separate out in it the impressions he gains of
the witness, of his testimony, of his credibility, all these
things in one hearing, and apply that only in one case,
and do similarly in another hearing where the witness
testifies in each case on the identical issue, identical factual
issue is involved in each case.

Now, if your Honor please, it seems to us this contem-
plated procedure, as I say, does deprive us of substantial
rights and we feel it is our duty to note that fact on the
record at this moment because it is precisely at this
moment that we are for the first time on official notice
that this procedure is being followed and accordingly, we
do note it and will, of course, make such appropriate
motions and objections as whatever ensues in these proceed-
ings may warrant, but I think our duty is clear and plain
to note what is happening before it happens and while
there still exists opportunity to remedy it.

2253

Afternoon Session.

(2:00 P. M.)

Hearing Examiner Kolb: You may proceed.

Mr. Kelaher: Mr. Examiner, the following stipulation has been agreed upon by counsel for respondent Atlantic, and counsel supporting the complaint. Counsel for respondent, the Atlantic Refining Company, and counsel supporting the complaint agree and stipulate that if appropriate officers and employees of Atlantic were called as witnesses by counsel supporting the complaint in this proceeding and asked the following questions, such witnesses would testify as follows; and that the following may be accepted by the Examiner and the Commission for the purpose of its determination and order herein as if such witnesses had so testified and in lieu of such testimony.

The statements set forth below are made solely for the purpose of this proceeding or any review thereof, and for no other action, case or proceeding.

Answers Submitted by the Atlantic Refining Company in Response to F. T. C. Request for Additional Information Concerning Certain Exhibits in the Matter of the Goodyear Tire & Rubber Company, The Atlantic Refining Company, Corporations Docket No. 6486

2254 CX 84-B (Initials JVP)

Q. "Identify Joseph VanPelt."

A. In August 1952, Joseph VanPelt was Assistant to the Manager of Gasoline, Naphtha and Solvent Section, Domestic Marketing Department, Atlantic.

CX 102 A-D

Q. "Identify T. E. Kelley and K. M. Ford."

A. In August 1949, T. E. Kelley was Director, Organization and Methods Department, Atlantic.

In August 1949, K. M. Ford was Sales Industrial Engineer, Industrial Engineering Division, Atlantic.

CX 110

Q. "Identify G. H. Milligan."

A. In March 1950, G. H. Milligan was Chief Accountant, Chief Accountant's Office, Atlantic.

CX 114 A-D

Q. "Identify G. H. Milligan."

A. In May 1950, G. H. Milligan was Chief Accountant, Chief Accountant's Office, Atlantic.

CX 138

Q. "Identify W. J. Butler."

A. In June 1951, W. J. Butler was Sales Promotion Assistant, Sales Promotion Section, Domestic Marketing Department, Atlantic.

2255 CX 139 A-B

Q. "Identify W. J. Butler."

A. In January 1952, W. J. Butler was TBA Sales Promotion Assistant, Sales Promotion Section, Domestic Marketing Department, Atlantic.

CX 154

Q. "Identify R. W. Reed."

A. In January 1951, R. W. Reed was Administrative Assistant, Office of the Vice-President and General Manager of Marketing, Atlantic.

CX 171 A

Q. "Identify W. C. Hoffman."

A. In October 1951, W. C. Hoffman was Senior Clerk, TBA Section, Domestic Marketing Department, Atlantic.

CX 172 A

Q. "Identify W. C. Hoffman."

A. In October 1951, W. C. Hoffman was Senior Clerk, TBA Section, Domestic Marketing Department, Atlantic.

CX 173

Q. "Identify W. C. Hoffman."

A. In July 1951, W. C. Hoffman was Senior Clerk, TBA Section, Domestic Marketing Department, Atlantic.

CX 179 I

Q. "Identify W. C. Hoffman."

A. In October 1951, W. C. Hoffman was Senior 2256 Clerk, TBA Section, Domestic Marketing Department, Atlantic.

CX 181

Q. "Identify W. C. Hoffman."

A. In May 1952, W. C. Hoffman was TBA Marketing Coordinator, TBA Section, Domestic Marketing Department, Atlantic.

CX 183

Q. "Identify W. J. Butler."

A. In May 1952, W. J. Butler was TBA Sales Promotion Assistant, Sales Promotion Section, Domestic Marketing Department, Atlantic.

2257 Mr. Kelaher: Mr. Examiner, we have entered into another stipulation with counsel for respondent Atlantic whereby it is stipulated and agreed that supplemental data concerning the three market areas designated by counsel in support of the complaint, namely, Philadelphia-suburban district, Wilmington, Delaware district, and Baltimore, Maryland district, may be received in evidence, with notation of the fact that portions of this data apply only to Goodyear, and portions apply only to Firestone. Such data relate to the number of Atlantic dealers in each designated district covered by a form G-1209, broken down by Goodyear supply points with respect to the Philadelphia-suburban district, and the number of Atlantic dealers in

Atlantic's Wilmington, Delaware and Baltimore, Maryland districts covered by form S-757, broken down by Firestone supply points, all data as of June 30, 1956.

(The stipulation follows:)

2258 Number of Atlantic dealers in Atlantic's Philadelphia-Suburban District who, as of June 30, 1956, were covered by a Form G-1209, broken down by Goodyear supply points:

Supply Point	Atlantic Dealers Covered by Form G-1209	
	Lessee Dealers*	Contract Dealers*
Goodyear Tire and Rubber Co., Philadelphia, Penn. (District Office).....	2	6
Harvey W. George, Philadelphia.....	45	49
F. C. Glenn, Philadelphia.....	52	42
Ellwood E. Kieser, Philadelphia.....	40	116
E. F. Miller, Philadelphia.....	39	19
Goodyear Tire and Rubber Co., Jenkintown, Penn. (Goodyear Store).....	2	4
Goodyear Tire and Rubber Co., Norristown, Pennsylvania (Goodyear Store).....	8	1

* Includes 11 lessee dealers and 5 contract dealers classified by Goodyear as associate dealers, who had two alternate supply points; and 3 contract dealers who, having chosen to be both a Goodyear Dealer and a Goodyear Associate Dealer, dealt with the Goodyear District Office in the former capacity and with a different supply point in the latter capacity.

Does not include 61 customers of Edward Parris and 54 customers of Frank Hagan, both of whom are Atlantic supplying dealers.

2259 Number of Atlantic dealers in Atlantic's Wilmington, Delaware, District who, as of June 30, 1956, were covered by a Form S-757, broken down by Firestone supply points:

Supply Point	Atlantic Dealers Covered by Form S-757	
	Lessee Dealers*	Contract Dealers
Buchanan's Firestone Store, Dover.....	11	13
Buchanan's Firestone Store, Milford....	8	7
Easton Sales Company, Easton, Md.....	4	0
Firestone Tire & Rubber Co., Baltimore, Maryland (District Office)	1	1
Firestone Store, Salisbury, Md.....	16	9
Firestone Tire & Rubber Co., Philadelphia, Pennsylvania (District Office)...	1	2
Firestone Store, Wilmington	47	19
Laurel Home & Auto Supply, Laurel....	4	1
Hitchen's Auto Service, Ridgely, Md....	2	1

* Includes one lessee dealer classified by Firestone as an Associate Dealer who had two alternate supply points, and one lessee dealer who, having chosen to be both a Firestone Dealer and a Firestone Associate Dealer, dealt with the Firestone Philadelphia District Office in the former capacity and with a different supply point in the latter capacity.

Does not include at least one customer of John Salisbury, who is an Atlantic supplying dealer.

2260 Number of Atlantic dealers in Atlantic's Baltimore, Md. District who, as of June 30, 1956, were covered by a Form S-757, broken down by Firestone supply points:

Supply Point	Atlantic Dealers Covered by Form S-757	
	Lessee Dealers*	Contract Dealers*
Al's Tire Service Havre de Grace.....	5	1
Automotive Supply Co., Somerset, Pa...	6	8
Dezen's, Cumberland	6	5
W. F. Flood & Son, Annapolis.....	1	1
Firestone Tire & Rubber Co., Baltimore	0	3
Firestone Store, Martinsburg, West Virginia	1	2
Firestone Store, Howard Street, Baltimore	59	12
Firestone Store, Washington, D. C.....	9	0
Firestone Store, Edmondson Village, Baltimore, Md.....	1	1
Firestone Store, Wilmington, Del.....	1	4
Firestone Store, Silver Springs	1	0
Jack's Tire Service, Baltimore, Md.....	2	0
Southern Maryland Oil Co., LaPlata....	4	0
S. K. Osborne, Reisterstown.....	1	0

* Includes 17 lessee dealers and 18 contract dealers, classified by Firestone as associate dealers, who had two alternate supply points.

2308

400 Commerce Street
Baltimore, Maryland
Monday, 30 June 1958

Met, pursuant to notice, at 10:00 a. m.

Following Testimony Taken At Baltimore
2309 Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: If your Honor please, I wish to call to the stand Mr. Holland Hathaway for a few preliminary questions. I plan to call Mr. Hathaway as a substantive witness at a later stage of the proceeding, but not today.

Mr. Hathaway?

Mr. Kelaher: Mr. Examiner, before we take testimony from witnesses, I think at our last hearing there was a rule requested by counsel for respondents for exclusion of witnesses. I think we should have the same arrangement now that respondents are beginning to put in their defense.

Mr. Thompson: Mr. Examiner, may I speak to that point for a moment?

In the case of witnesses from the Atlantic Refining Company who are in sales positions, it would save a lot of time if they were permitted to be present in the courtroom and hear the testimony of their predecessor witness. If that is not done, it will be necessary, when I come, for example, to examine a substantive witness who is reporting to Mr. Hathaway, the district sales manager here, to ask him a lot of questions about subject matter which would be merely corroborative but present essential background.

I think it would shorten the hearing a lot if, when
2310 I come to those witnesses, I could ask them with respect to a number of more or less formal topics, whether they had heard the testimony of their predecessor, and whether he had correctly stated the information, so

far as they knew. If we do it the other way, I think it will cause a lot of confusion and prolong the record.

Mr. Kelaher: Mr. Examiner, I think, as I understand counsel, he has no objection to excluding dealers; is that correct? Atlantic dealers who will be called?

Mr. Thompson: Mr. Kelaher, this of course is a public hearing. I know of no law or rule or policy of the Commission which excludes witnesses from a public hearing. It doesn't make any difference to me which way you do it. But it does seem to be an odd procedure.

Mr. Kelaher: An odd procedure? I would like to call your attention to the fact that the same request was made by counsel for respondents and we were faced with the problem of excluding witnesses, and there was quite a furor raised when you found one in here one day that we didn't know about.

Mr. Thompson: Not by me. At no stage of this proceeding have I ever moved that any government witness be excluded from the hearing room while testimony was being taken.

Mr. Kelaher: It is true it was counsel for respondent Goodyear, but the rule applied just the same.

Mr. Mason: May I suggest that there is a distinction now because this is the only air-conditioned room on a very hot summer day. It would be a very great burden on the witnesses to keep them out in this hot weather.

Mr. Thompson: What is your objective? Would you state it for the record? What is the reason back of your motion?

Mr. Kelaher: I am not so sure that you had to give any reason at the time, but I will give a number of reasons.

Mr. Thompson: I didn't make such motion. I will ask you to state your reasons.

Mr. Kelaher: I would like to talk first about the At-

lantic dealers. I don't think there is any question about the fact that we should have Atlantic dealers excluded.

Now, with respect to Atlantic personnel, where you have the hierarchy in, you have a salesman, a sales supervisor, and you will have a district manager, it seems to me that in all fairness you should have them testify separately and not sitting here listening to what a prior witness has said in order to correlate their testimony. I am not saying that they will, but there is always that possibility.

Mr. Thompson: You understand, of course, that that will quite materially prolong the hearings, Mr. Kelaher?

Mr. Kelaher: I will have to take that chance, I guess.

Hearing Examiner Kolb: He will be entitled to 2312 keep one man in to assist in the trial of this case. If

Mr. Kelaher insists on it, we will have to exclude the witnesses. I was hoping ~~he~~ he wouldn't be too insistent on it in view of the fact it is quite warm outside.

Mr. Thompson: Does your ruling apply to company witnesses as well as dealers?

Hearing Examiner Kolb: Yes. You can retain one man.

Mr. Thompson: May I ask, for my own information, whether this is Federal Trade Commission policy?

Hearing Examiner Kolb: It is the law.

Mr. Thompson: I have rarely run into it, sir, in public hearings. I have no real objection. I am not making an issue of it.

These are purely formal questions. We can put Mr. Varnadore out to suffer if you want to. It won't make a particle of difference to him.

Mr. Kelaher: Mr. Examiner, Mr. Thompson has explained, as I understand it, that Mr. Hathaway will be called on July 2nd—at least he is scheduled to be called on July 2nd. It is my understanding that any cross-examination by me can be deferred until that time. Is that correct?

Mr. Thompson: I don't think I am going to bring out anything you will want to cross-examine on, Mr. Kelaher, But if I do, I suggest that you cross-examine now.

2313 HOLLAND M. HATHAWAY was called as a witness for the Respondent and, having been first duly sworn, testified as follows.

Direct Examination by Mr. Thompson.

Q. Will you state your full name and address?

A. Holland M. Hathaway, 100 Croftley Road, Luther-ville.

Q. Mr. Hathaway, you are the Atlantic Refining Company's district manager in the Baltimore district?

A. I am.

Q. I am going to ask you a very few questions about some men who were referred to in the testimony during the presentation by the government of its case.

Do you know a J. W. Varnadore?

A. Yes, sir.

Q. Mr. Varnadore was referred to by one Eugene Savage, a government witness, in the transcript of testimony beginning at Page 1756, and on cross-examination at Pages 1810 to 1812.

Is Mr. Varnadore presently an Atlantic lessee?

A. Yes, sir.

Q. Has Mr. Varnadore been subpoenaed to appear as a witness in this proceeding and to appear today?

A. Yes, sir.

Q. Do you know a Mr. Charles G. McKaig who
2314 was referred to by government witness Elmer C. Lang transcript of testimony 1866 on direct examination, and 1905-1906 on cross-examination?

A. Yes, sir.

Q. Has he been subpoenaed to appear as a witness in this proceeding today?

A. Yes, sir.

Q. Do you know a Mr. William H. Leonard who was referred to by Eugene Savage, a government witness, at Pages 1754 and 1755 on Direct and on cross-examination at Pages 1820 and 1821?

A. Yes, sir.

Q. Has he been subpoenaed to be present today?

A. Yes, sir.

Q. Do you know a Mr. Gabriel Tydings, who was referred to by Joseph Scheiner, a government witness, at Pages 1948 to 1987 on direct examination, and 2004 to 2010 on cross-examination?

A. Yes, sir.

Q. Is he a former Atlantic lessee?

A. Yes, sir.

Q. Do you know what he is now doing?

A. He is a route salesman for Cloverland Dairies, Baltimore.

Q. Has he been subpoenaed to come here today?

A. Yes, sir.

Q. Do you know a Mr. Lester Lewis?

A. I know him.

Q. Was he a former one-time Atlantic lessee?

2315 A. Yes, sir.

Q. Mr. Lewis was referred to by one Elmer Lang at Pages 1868 and 1869 in the testimony. Have you been able to locate Mr. Lewis?

A. Yes, sir.

Q. He is no longer an Atlantic lessee?

A. No, sir.

Q. Has he been subpoenaed to come here today?

A. Yes, sir.

Q. Another man who was referred to in the testimony

by Mr. Elmer Lang was a William T. Batchelor, Pages 1866 and 1867 on direct examination, and 1907 and 1908 on cross-examination. Is Mr. Batchelor presently an Atlantic lessee?

A. No, sir.

Q. Have you made an effort to locate him?

A. Yes, we have.

Q. Were you able to do so?

A. No, sir. We are unable to do so.

Q. You were not able to serve a subpoena upon him?

A. We were not able to locate him.

Q. You don't know where he is?

A. Have no idea.

Q. Have you ever heard of a man named Joseph Hackett, who was referred to by Eugene Savage on direct examination at Pages 1822-1824?

2316 A. Yes, sir. He is a former Atlantic dealer.

Q. Did you make an effort to locate him?

A. Yes, we did.

Q. Did you find out where he is?

A. To the best of our knowledge he is somewhere in Tennessee.

Q. You were unable to subpoena him to be present?

A. That's right.

Mr. Thompson: That is all. Mr. Kelaher, do you have any questions to ask on those subjects?

Mr. Kelaher: I have no questions.

Mr. Thompson: Thank you, Mr. Hathaway. You will be recalled at a later point in the hearing.

I have a few more questions, Mr. Hathaway.

By Mr. Thompson:

Q. When Lester Lewis was an Atlantic lessee, was his station known as the L&S Station?

A. Yes.

Q. Was that at 2607 Gwynne Falls Parkway?

A. That is correct.

Q. We referred a moment ago to a Joseph Hackett. Did he run a station called Joe's Atlantic, 829 Eastern Avenue, Baltimore?

A. That is correct.

Mr. Kelaher: May I have a question?

2317 *Cross-Examination by Mr. Kelaher.*

Q. Do you recall the name of Mr. Lewis' partner, if he had a partner?

A. I believe it was Strauss.

Q. Was it Howard A. Strauss, Jr.?

A. I can't testify as to the name, except Strauss.

Mr. Kelaher: That is all.

(Witness excused.)

Mr. Thompson: Under the motion for exclusion stated by Mr. Kelaher, he stated a supervisory employee of Atlantic might assist me during this case. I designate Mr. Hathaway as that assistant.

J. W. VARNADORE was called as a witness for the respondent Atlantic, and having been duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: State your name.

The Witness: J. W. Varnadore.

Direct Examination by Mr. Thompson.

Q. Where do you live?

A. 8103 Subet Road, Baltimore, Maryland.

Q. Mr. Varnadore, in this investigation I represent the Atlantic Refining Company. My name is Thompson.

2318 The gentleman who just swore you is Mr. Kolb, who is the Trial Examiner and presiding officer of the Federal Trade Commission in this case. The extremely handsome looking gray-haired gentleman with glasses sitting on your left is my opponent, Mr. Kelaher, who represents the Federal Trade Commission.

Mr. Varnadore, are you an Atlantic lessee service station operator?

A. I am.

Q. Do you have the so-called Edmondson Village Service Center?

A. Edmondson and Swann.

Q. How long have you had that station.

A. About six years.

Q. Since about October 1951?

A. Around that, yes.

Q. Do you have a partner named Joe Wyninger?

A. I do.

Q. Is your station also sometimes known as the Atlantic Service Center?

A. That's right.

Q. Is your telephone number Longwood 6-9764?

A. It is.

Q. Have you, since about 1953, had three-year leases from Atlantic Refining?

A. Right.

Q. What is the term of your lease? Is it three years?

2319 A. It runs three years, yes.

Q. Is this the second time you have had a three-year lease?

A. Yes.

A. There is a shopping center in which your station is located?

A. That's right.

Q. What is the name of the shopping center? Edmondson Village?

A. Edmondson Village.

Q. Before you took a station as an Atlantic lessee about 1951 or so, were you also a service station operator somewhere else?

A. Yes, I had a place on Key Highway, Atlantic.

Q. Was that Key Highway and Light Street?

A. Yes.

Q. About how many years did you have that station?

A. I had that about ten years.

Q. Did you own it, Mr. Varnadore?

A. Yes.

Q. So that you were an Atlantic dealer?

A. That's right.

Q. And did you sell that station about 1951?

A. Yes, I sold the business.

Q. And at that time you took a lease from Atlantic?

A. About a year and a half after that.

Q. When you sold that contract station of yours, 2320 did you have offers from a number of oil companies?

A. Oh, yes.

Q. In addition to Atlantic?

A. That's right.

Q. And you took an Atlantic station as lessee?

A. That's right.

Q. And that is the station which you still have?

A. It is.

Q. When you had your own service station at the Key Highway location, did you handle TBA?

A. Yes.

Q. What kind of a building was it when you had your own station? One story, or two story?

A. It was a two-story building.

Q. So that you had some storage space in it?

A. Oh, yes, plenty of storage.

Q. When you had your own station, what kind of tires were you carrying?

A. Well, I handled practically all tires, you know, most anything, Goodyear, Firestone, U. S., Armstrong.

Q. Did you buy your U. S. tires from Burke-Savage, do you remember?

A. I did.

Q. And your Firestones from the Firestone store?

A. That is right.

2321 Q. And Goodyear from whom?

A. I get them off the dealer.

Q. Plotkin?

A. Yes. B. Plotkin handles tires.

Q. Was there or was there not a tire shortage in those days.

A. Well, there was, you know, right after the war there was. During the war you couldn't get them.

Q. Do you recall how long that shortage lasted?

A. No, I can't, not off-hand.

Q. As late as 1951, would you say?

A. Oh, yes.

Q. Why did you carry Firestone tires at your own station on Key Highway?

A. Well, because I had a few that wanted Firestone. I had some customers that wanted Firestones so I carried Firestones.

Q. Did you find that Firestone had good customer acceptance?

A. Oh, yes.

Q. Were they easy to sell?

A. Yes. Firestone is easy to sell.

Q. Was that true before 1951 and true today? Has it always been true?

A. Well, ain't none of them so easy to sell today.

Q. Getting harder?

A. They are all hard, yes.

Q. When you had your Key Highway station, 2322 what kind of batteries did you handle?

A. Exide, when I quit building by own batteries.

Q. And you built your own batteries for a while?

A. Yes.

Q. Then you took on the Exide line?

A. That is right.

Q. What kind of accessories did you carry at your own station on Key Highway?

A. I carried practically everything, you know, that goes along with a car, the accessories.

Q. Did you have a lot of different suppliers?

A. Yes.

Q. When you took your lease from Atlantic at Edmondson Village, was Atlantic then promoting the Firestone-TBA line?

A. I believe it was.

Q. Do you recall receiving certain letters from Atlantic about its TBA policy?

A. A few weeks ago?

Q. No, over the years.

A. Oh, yes, always get them.

Q. Relating to TBA policy?

A. Well, I didn't read up on it much.

Q. Mr. Varnadore, I am going to hand you two letters which have been marked in this case as exhibits Commission's exhibits 206 and 207, and I will ask you first to 2323 take a look at a letter from Mr. Colley dated August 28, 1952, and ask you whether you remember receiving it as an Atlantic dealer? (Handing to witness.)

A. Yes, I received one of these.

Q. Do you remember receiving another letter in the form of Commission's Exhibit 207 dated June 24, 1955.

This particular letter happens to be signed by a man named Estlow, and if you received one it would have been signed by the regional manager of Atlantic in the Southern Region. I am going to ask you to look at it and see if you remember that form of letter. (Handing to witness.)

A. Yes.

Q. Mr. Varnadore, since you took the Edmondson Village Atlantic station, what kind of tires have you been handling principally?

A. Well, I have handled Firestone and a few other brands.

Q. Would you be kind enough to tell the Examiner your reasons for handling Firestone tires?

A. Well, because it is handy for me.

Q. Explain that, please.

A. Well, there is a Firestone store right in back of me, and it is easy to get—I haven't got the room to carry the stock I like to carry in all sizes, and it comes in handy by the store being back there. That is the reason I carry Firestone. It is easy to get.

2324 Q. In other words, there is a Firestone store just a few doors from your station?

A. Right behind me, yes.

Q. And you had previously handled Firestone at your Key Highway station?

A. Oh, yes.

Q. What had you found with respect to Firestone quality?

Mr. Kelaher: Objection, your Honor. The same question was asked on direct and objection was always raised with respect to any testimony as to quality.

Mr. Thompson: I don't understand the objection, Mr. Kelaher.

Mr. Kelaher: I don't think he is qualified to testify as to the quality of the tires.

Mr. Thompson: I shall rephrase the question, happily.

By Mr. Thompson:

Q. In your experience for many years as a service station operator, what opinion have you reached with respect to the quality of Firestone tires?

Mr. Kelaher: Objection, your Honor. Don't answer until we get a ruling.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Thompson:

Q. Go ahead.

A. I always found the Firestone a good tire.

2325 Q. Do you find public demand for Firestone tires?

A. Well, I guess about the same as any of the rest of them.

Q. About the same as any other name brand?

A. You generally sell yourself when you sell them, you know, to a customer.

Q. Has your own experience with Firestone been good? Firestone tires?

A. Oh, yes.

Q. You don't stock many tires at your present station?

Mr. Kelaher: Objection, your Honor. That is a leading question.

Mr. Thompson: I will rephrase it.

By Mr. Thompson:

Q. Do you stock many tires at your present station?

A. Well, a good many.

Q. Did you say the Firestone store gave you good delivery?

A. Oh, yes.

Q. Did you say it gave you a decent price?

A. Well, yes.

Mr. Kelaher: Your Honor, my good friend is probably trying to curtail examination, but I think he is leading the witness in his questions.

Hearing Examiner Kolb: I don't think it is anything that will bother us very much at present.

2326 By Mr. Thompson:

Q. At your present station, are you handling reconditioned tires?

A. A few, yes.

Q. What brand do you use?

A. Any brand.

Q. Do you buy reconditioned U. S. Royal from Burke-Savage?

A. High-tops.

Q. High-tops?

A. Yes.

Q. Is that a U. S. Royal tire?

A. All makes.

Q. Do you handle any tires your customers want at your station?

A. If they want them, I get them for them.

Q. Outside your station, out on the driveway, what kind of tires do you put out there?

A. Well, I have some old tires out there for show.

Q. In other words, you put the reconditioned tires outside?

A. Yes, that is right.

Q. And keep the Firestone and other new tires inside?

A. That is right. Only have a couple outside for people to see.

Q. What brand of battery do you carry at your present station, Mr. Varnadore?

2327 A. Exide.

Q. I will ask you to refresh your recollection by looking at a classified telephone directory for the City of Baltimore, page 89, and the listing under "Exide Batteries," of "Atlantic Service Center, Edmondson and Swann Avenues."

A. That is right.

Q. With the telephone number Longwood 6-9764, and I ask you whether that is your station?

A. That is my station.

Mr. Kelaher: For the record, could we have the date of the telephone directory?

Mr. Thompson: This particular issue is June 1957.

By Mr. Thompson:

Q. Mr. Varnadore, have you been listed in the classified directory as an Exide dealer for some years?

A. Oh, yes.

Q. Many years?

A. A good many.

Q. Do you prefer Exide batteries to Firestone batteries?

A. Well, yes, I do.

Q. Who do you buy your Exide from, Mr. Varnadore?

A. I get them from Martin Brothers.

Q. Do they give you good—

A. (Interposing.) In other words, it is Martin Auto Sales. It is good service.

2328 Q. (Continuing.) —service?

A. Yes.

Q. Good price?

A. Well, I get a pretty good price.

Q. Where do you keep these Exide batteries? Are they out in the open?

A. No, right in the office.

Q. Inside your station?

A. Right inside the office, yes.

Q. Are they in plain sight?

A. Oh, yes.

Q. Are they visible to anybody who comes into the station?

A. Anybody who comes in there can fall over them.

Q. So that Atlantic salesmen when they come in can see them?

A. Oh, yes, they can see them.

Q. Anybody else can see them?

A. Anybody. That is what I have them for.

Q. How about your accessories? Where are you buying them?

A. Most any place. From wagons that come around, from different dealers, different jobbers.

Q. Could you name a couple of accessory jobbers who are your principal suppliers?

A. Well, yes, Replacement Parts, Martin Auto, Monarch, K&C—that is a wagon.

Q. Is it K&C or K&S?

2329 A. K&S.

Q. Is that the one called K&S Auto Supply?

A. That is right.

Q. Did you mention R & N?

A. No, I didn't.

Q. Is that Roper and Negley?

A. Yes.

Q. Do you buy from them?

A. Yes, I buy from them.

2330 Mr. Kelaher: I object to questions of that type.

He hadn't mentioned the particular supplier until counsel asked him if he had mentioned it.

That is leading.

Mr. Thompson: If your Honor please, I have a list of about 100 Baltimore dealers. It seems to me it is entirely proper for me to ask any witness whether he buys from a particular account.

Hearing Examiner Kolb: Objection overruled.

Mr. Kelaher: I have no objection to that. But I assumed—perhaps it was inadvertent—

Hearing Examiner Kolb: He can, if he wishes, to exhaust the man's memory and name them all, if he wants to take that route.

By Mr. Thompson:

Q. How about R. W. Norris, do you buy from them?

A. Oh, yes; I buy from them.

Q. Did you ever hear of a company called Baltimore Gas and Light?

A. Oh, yes. I have dealt with them for years.

Q. Wasn't the Baltimore Gas and Light salesman a very close personal friend of yours?

A. Yes, very close.

Q. Did he die?

A. He died.

2331 Q. After he died, did you continue to buy as much from Baltimore Gas and Light?

A. No, I didn't.

Q. Did you ever hear of a company called J. R. Hunt?

A. Oh, yes.

Q. Did you buy from them occasionally?

A. Yes. I used to get all my batteries from them, Exide, after I stopped making my own batteries.

Q. How about Loock—L-o-o-c-k—Company?

A. R. J. Loock?

Q. Yes.

A. Yes, I used to buy stuff off of them.

Q. Have you dropped them or are you still buying from them?

A. Here is the whole thing. If I bought all of them I would be talking to salesmen all day.

Q. Do you buy some accessories from Firestone?

A. Oh, yes.

Q. Right, there in the same village?

A. Right there. Or I order down from 25th Street.

Q. How about your accessories, are they on your shelves?

A. Oh, yes.

Q. Are they openly displayed so anybody can see them?

A. Yes, anybody can see them who walks in there.

Q. Did any representative of Atlantic ever criticize you for carrying these non-Firestone batteries or tires?

2332 A. No, they never bothered me.

Q. Did anybody from Atlantic ever tell you to stop buying those things?

A. No.

Q. Did they ever tell you to get them out of the station?

A. No.

Q. Did they ever suggest that you hide them?

A. Oh, no. Can't hide them.

Q. Who decides what kind of TBA you buy?

A. Well, my partner and myself.

Q. Did Atlantic ever try to force you to buy something you didn't want to buy?

A. Oh, no, they never force me to buy nothing.

Q. Did you feel free to buy any TBA you want?

A. I do.

Q. Do you feel free to buy TBA from any source you want?

A. Any place I want to get it.

Q. Do you feel you have to buy Firestone tires if you don't want to?

A. No, I don't have to buy them.

Q. Do you think Atlantic would cancel your lease if you didn't buy Firestone?

A. I don't know whether they would or not. I hope not.

Q. Do you think they would?

A. No, I don't think so.

2333 Mr. Kelaher: Objection to that question and answer.

Hearing Examiner Kolb: Objection overruled.

By Mr. Thompson:

Q. Did anybody from Atlantic ever tell you you had to buy from Firestone?

A. No.

Q. Mr. Varnadore, all this non-Firestone TBA that you carry, do you sell that on Atlantic credit cards?

A. Part of it, I do. Part of it I carry myself. When they got an Atlantic credit card I put it on their credit card.

Q. And you carry your own personal accounts sometimes?

A. That's right.

Q. Have you ever had any hesitancy about selling non-Firestone TBA on Atlantic credit cards?

A. No.

Q. Did anybody ever criticize you for doing it?

A. No.

Q. Mr. Varnadore, your lease has come up for renewal a lot of times, has it not?

A. That's right.

Q. When your lease comes up for renewal, has your salesman or supervisor or the Atlantic District Manager ever criticized you for carrying this non-Firestone TBA?

A. No.

2334 Q. Has that subject ever been mentioned when your lease came up for renewal?

A. Well, no, not that I recall.

Q. Do you deal with Mr. Hathaway when your lease comes up for renewal?

A. When it comes up, I deal with Mr. Hathaway.

Q. Sir, as a gentleman in business for a long time, have you had, since 1951, propositions from competitors?

A. Oh, yes.

Q. I mean Atlantic competitors?

A. That's right.

Q. If you wanted to quit Atlantic, would you have any difficulty getting another station from another company?

A. Not a bit in the world.

Q. Have you, in the years that you have been in business, developed a kind of personal trade that comes to the station because of you?

A. Well, I guess every station does to a certain extent.

Q. Have your relations with Atlantic always been good?

A. Oh, yes.

Q. Do you know a man named Eugene Savage?

A. I do.

Q. Is he an outside salesman for the Burke-Savage Tire Company?

A. That's right.

2335 Q. Mr. Varnadore, Mr. Savage testified in this case on November 20, 1957, before Judge Kolb here. He said some things about you that I want to read to you, and ask you to comment upon them.

My friend, Mr. Kelaher, at transcript page 1756, asked Mr. Savage this question:

"Do you recall the names of any other Atlantic dealers with whom you had conversations concerning their purchase of U. S. tires?"—referring to U. S. Royal tires.

Mr. Savage said, "Yes. There is a service station now in business at Edmondson Avenue and Swann."

That would be your station, would it not?

A. That's right.

Q. And Mr. Varnadore—that is of course you?

A. That's right.

Q. Mr. Savage said, "At one time Mr. Varnadore, in another station, carried exclusive Burke-Savage products."

A. He is wrong there.

Q. Is that true?

A. I didn't carry everything of Burke-Savage.

Q. You testified that you carried a number of brands?

A. Oh, yes; I carried a number of brands.

Q. Then he went on and said, "He doesn't stock anything but Firestone tires today."

Is that true?

2336 A. That's right.

Q. In addition to Firestone tires, do you carry U. S. Royal reconditioned?

A. No. Well, yes, reconditioned. That is the high tops.

Q. And deal in any other tires you want?

A. That's right. In other words, I bought new ones off of them as I get an order for them.

Q. Mr. Savage also said this, referring to you: "He had an Atlantic station?"

"That's right. He owned his own station previous to this station that he now has. When he owned his own station he carried Burke-Savage products exclusively."

A. Not everything. Not all.

Q. You said that was not so?

A. No.

Q. I am sorry to be repetitious.

A. I carried different brands.

Q. I am trying to read to the testimony.

Mr. Savage made the same statement twice.

A. Different brands.

Q. Then he said, "Mr. Varnadore told me exactly that when he owned his own station, he was at liberty to carry

what he wanted to, but now that he leases his station he is forced into carrying Firestone products."

A. He is wrong in the "forced" part.

2337 Q. Did you ever tell him that?

A. No. Not that I can recall it. In fact, I wouldn't use that word. Nobody forced me to do nothing.

Q. Then he was asked: "When did this conversation take place?"

And he said: "Sometime in 1954."

Have you any recollection at all of any such conversation?

A. Well, I might have talked to him but I didn't bring it out in those words.

Q. What would you have said to him?

A. Well, if I had said it, I would have said, "I will handle your tires but I haven't got the room to carry all brands of tires here. I will handle a few of your tires but I haven't got the room to carry all brands of tires here. I will handle a few of your tires as I need them."

Q. At a later point, Mr. Savage in answer to another question, at transcript page 1812, testified to a conversation which he said he had with you, and he placed this conversation having occurred at your station in 1956. He said—this is Mr. Savage talking now:

"I had a package deal, a price on approximately 25 tires which Mr. Varnadore could buy at an attractive discount, and he made the comment that the price is right and he had conceded he could sell those tires, but in view of the fact that he was so close to the Firestone store his
2338 comment was that the salesman, and big shots, would come over and see other brand tires at this station and would put him in definite jeopardy with his lease."

A. No. I never made them words.

Q. You said no words before I asked the question. Did you ever say any such thing to Mr. Savage?

A. I can't recall ever using the words like that.

Q. Did you ever say any such thing to Mr. Savage?

A. No.

Q. As a matter of fact, sir, didn't you testify that outside of your station, where people could see them, you carried the reconditioned Burke-Savage tires?

A. That's right.

Q. And placed them on the driveway?

A. Yes.

Q. And nobody ever threatened you with your lease for doing that?

A. No.

Q. Or criticized you?

A. Never did.

Q. I asked Mr. Savage, on cross-examination, this question, and he made the following answer, and I would like to read it to you. I said to Mr. Savage:

"Is it not a fact that at this station there are Exide batteries all over the place?"

2339 And he said: "Until you showed me this ad"—he was referring to the yellow telephone classified directory—"I had no knowledge what kind of batteries he"—mentioning you, Mr. Varnadore—"was selling."

Had not Mr. Savage been to your station a number of times?

A. Oh, yes.

Q. Is my recollection correct that you said there were Exide batteries all over the place, and anybody would trip over them?

A. That's right.

Q. Mr. Varnadore, it is possible that the gentleman sitting on my right, Mr. Mason, who represents the other company being investigated in this proceeding—and that is the Goodyear Tire and Rubber Company—may want to ask you some questions.

Do you, sir?

Mr. Mason: I don't want to ask any questions. And I would ask that this testimony be accepted subject to Goodyear's motion to strike since it has no bearing on Goodyear-Atlantic sales commission plan.

Mr. Thompson: It is also possible that Mr. Kelaher might want to ask you one or two questions.

Hearing Examiner Kolb: The testimony will be stricken so far as Goodyear is concerned and will apply only to Atlantic.

We will recess for a few minutes.

(A short recess was taken.)

2340 Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Kelaher.

Q. Mr. Varnadore, I would like to get some dates a little clearer in mind with respect to your service station operation.

Do you remember the year when you started as a contract dealer for Atlantic?

A. Yes, it was in 1952 I believe.

Q. As a contract dealer?

A. Yes.

Q. Wasn't that in the 40s?

A. That was back in the 40s, yes.

Q. What year did you begin?

A. It was a good many years before the war.

Q. Did you say your memory—

A. It was around '39 or '40.

Q. How long did you—

A. No, I take that back. It was '37.

Q. How long did you continue to operate the Atlantic station as a contract dealer?

A. Until 1951.

Q. Do you remember the month in 1951 when you ceased to be an Atlantic contract dealer?

A. I believe it was in June.

2341 Q. And according to your testimony on direct examination, you said it was a year and a half after you ceased to be a contract dealer that you became an Atlantic lessee dealer. You also testified on direct that you became an Atlantic lessee dealer in October 1951.

A. No, not a lessee dealer.

Q. That would put you up to when? When did you become an Atlantic lessee dealer?

A. I can't recall the year on that. I sold out down there—I don't know whether it was in 1950 or—November 1952 I believe.

Q. You believe it was November 1952 when you became a lessee dealer?

A. Yes, I believe it was. I was out about a year and a half, you know.

Q. So October 1951 is incorrect, is that right?

A. It must have been.

Q. At the time you were a contract dealer, going back to that time, you testified that you handled various brands of tires, is that correct?

A. That is right.

Q. And were you a substantial purchaser of U. S. Royal tires from Burke-Savage at that time?

A. Well, here is the whole thing. I would buy most any place I could get tires. I carried a few Burke-Savage
2342 and a few Plotkin, Goodyear, such as that. And also Firestone, if dealers wanted that kind.

Q. Did you stock U. S. Royal at that time?

A. I stocked a few, yes.

Q. What other brands of tires did you carry at that time?

A. Well, I carried a few Goodyear, and Mohawk tires, and Armstrong.

Q. Did you carry Lee tires at that time?

A. No, not at that time. I carried Lee years ago.

Q. Before that?

A. Yes.

Mr. Thompson: What time are you talking about? I am confused.

By Mr. Kelaher:

Q. You say before that time. Would you clarify what you mean by that?

A. Well, I was on this side of the street in another building, and when I first started in the business I handled Lee tires.

Q. You were on this side of what street?

A. Key Highway and Light.

Q. Were you on that other side of the street as an Atlantic lessee dealer?

A. That is right.

Q. And that was beginning about 1937, is that correct?

A. Around that, yes.

2343 Q. When did you move to the other side of the street?

A. Well, about that time.

Q. You were only in the first station a short time?

A. No, I bought a man out in 19—when the depression hit, in 1929.

Q. You just mentioned 1929.

A. In 1929 I went into business on this side of the street.

Q. As an Atlantic dealer?

A. No, not as an Atlantic dealer, as a battery and tire and radio equipment.

Q. And your association with Atlantic didn't begin until 1937, is that correct?

A. Let me think. I bought a new Lincoln in 1936. It was either 1936 or 1937. It is too far back to remember.

Q. Your testimony on direct examination is that you became an Atlantic lessee, dealer in October 1951. That is incorrect. That is established, I think, now. Is that correct?

A. I can't recall. I would have to get some records on that.

Q. You stated a few moments ago that it was November 1952.

A. Well, 1952 I think it was.

Q. You mentioned that you bought Goodyear tires from Plotkin. I am not quite sure that Plotkin handles Goodyear tires.

A. What, now?

Q. Now.

A. I don't know whether he handles them now or not.

2344 Q. You are sure it wasn't Goodrich tires?

A. Either Goodrich or Goodyear. One of the two.

Q. You don't recall which?

A. No, I don't recall. I know they are Goodrich dealers.

Q. That is right.

A. But they handle everything too. You can go there and get any brand you want.

Q. You were buying either Goodyear or Goodrich from Plotkin?

A. Yes, you could get any brand you wanted.

Q. When you became an Atlantic lessee dealer in or about November 1952, were you on a year-to-year lease?

A. The first lease I think was a year.

Q. I am going to show you a copy of Commission's Exhibits 86 and 86-B, which is an Atlantic lease form B-3191 4-52, and ask you if that is the type of lease you signed at that time? (Handing to witness.)

A. I can't recall whether this is a copy of it or not, to tell the truth.

Mr. Kelaher: I think Atlantic has stipulated, your Honor, that the number shown on a particular lease would be applicable to any dealer becoming an Atlantic lessee dealer after that date.

Mr. Thompson: If it would save time—

The Witness: (Interposing.) I can't recall if that would be the lease or not.

2345 Mr. Thompson: If it would save time, I would be glad to stipulate with Mr. Kelaher the form of whatever leases Mr. Varnadore has with the company, and the dates.

Mr. Kelaher: That would be agreeable. It will be stipulated then that he entered into a lease form designated B-3191 4-52, Commission's Exhibits 86-A and -B.

Mr. Thompson: Excuse me. I am not stipulating now. I said I would stipulate. We will have to check of course.

Mr. Kelaher: I think it will interfere with cross unless we can determine that.

Mr. Thompson: Very good, sir, I will withdraw the offer to stipulate.

By Mr. Kelaher:

Q. Then after your first one-year lease you entered into a three-year lease, is that correct?

A. That is correct.

Q. And that would have been entered into in November 1953, is that correct?

A. Yes, I guess it is. I can't recall the dates.

Q. You can't recall the dates?

A. No.

Q. In 1953 you entered into a three-year lease, is that right?

A. That is right.

Mr. Kelaher: And according to the stipulations in 2346 the record, in 1953 an Atlantic lessee dealer would have executed Commission's Exhibit 86-A and -B.

By Mr. Kelaher:

Q. Do you have available, or do you recall the date of your current lease?

A. Well, yes. The last lease, I just signed up a new lease I think last month.

Q. Last month?

A. Yes.

Q. That would be—

A. This year covered the lease I had signed before, you see. In other words, when the three years run out, I signed another three-year lease, and I am under a new lease now from the one I took out before.

Q. When was the new lease effective?

A. The first of June.

Q. June 1, 1958?

A. Yes. I am pretty sure that is the time.

Q. I show you Commission's Exhibits 88-A-1 and A-2, A-3 and 88-B, and I ask you if these are copies of the documents which you have just executed, 88-A-1 and A-2 being the dealer lease, identified as B-31917/56. Attached thereto is a schedule A, 88-A-3, and also appended thereto as 88-B is what is known as the 11 point lease letter.

Do these constitute the documents which you entered into?

2347 A. Yes.

Q. Is this a copy of your current—

A. That is right.

Q. Schedule A, 88-A-3?

A. Yes.

Q. Mr. Varnadore, on direct examination you stated that you have been listed as an Exide battery dealer for a "good many years." Is that correct?

A. Yes.

Q. That would take you back to when?

A. Well, let's see. I started handling Exide before the War. I would say about 1940, I guess.

Q. And you have been listed in the yellow book of the telephone directory edition since that time?

A. Not every year, no. Not every year.

Q. Since you have been an Atlantic lessee dealer at your present station, have you been listed as an Exide dealer?

A. That's right.

Q. And you say you have been listed, as I understand your testimony, as an Exide dealer in the Baltimore Directory since November 1952, is that correct?

A. I am pretty sure it is.

Q. Would it come as a great surprise to you to know that you are not listed in the telephone directory, and the only one to which I had access was dated September 2348 ber 1955, Baltimore classified telephone directory, yellow page section?

Mr. Kelahe: I made a personal inspection of that, your Honor, at the Federal Trade Commission library, was unable to bring a copy with me. I would like to reserve the right to have a photostatic copy of that placed in the record.

Mr. Thompson: If this purports to be a question, I object to the form, unless Mr. Kelahe here wants to take the stand. I move the question be stricken.

Mr. Kelahe: I asked him a question,

Hearing Examiner Kolb: Read the question.

Mr. Thompson: I move that Mr. Kelahe's statement be stricken. Mr. Kelahe, if he wants to enter into a stipulation with counsel for Atlantic he will find we will always agree to anything that is true.

Mr. Kelahe: I asked him if it would come as a surprise

to him to find he was not listed in the Baltimore telephone directory every year since he became a lessee dealer.

The Witness: My partner takes care of all the advertising.

By Mr. Kelaher:

Q. Who does?

A. My partner, he takes care of all the advertising.

Q. So actually you are taking the position now that you are not sure of whether you are listed or not, is that correct?

2349 A. I wouldn't say every year. I say I am listed now in the telephone book.

Q. You made the statement that you had been listed every year since you became a lessee dealer, as an Exide—

A. Oh, no.

Q. (Continuing.) —battery dealer.

A. Not an Exide battery dealer.

Q. You stated, answer to a question by counsel for respondent Atlantic, that you had been so listed for a good many years. That is incorrect, isn't it?

A. Well, I don't know how many years you call a good many years.

Q. I asked you to identify the period, and you said since you became an Atlantic lessee dealer, which would put you back to November 1952, would it not?

A. It might not have been that long.

Q. It might not have been that long?

A. No.

Q. Do you know how long it has been?

A. No, I can't recall it. You know, right off hand.

Q. So actually the only one you know about is the one that is in the current directory, is that correct?

A. I know I was in there last year.

Q. In the one last year?

A. Yes.

2350 Q. Prior to that time, you don't know whether you were in or whether you were not in, is that correct?

A. I never looked up all the numbers, to tell you the truth.

Q. So your answer is that you are without knowledge as to anything prior to the June 1957 directory?

A. Well, no, not that I know of. I don't know whether it was in there or not, to tell you the truth. I would have to look back on my records.

Q. Do you recall when Mr. Savage stopped calling on you as a salesman?

A. I didn't know he had stopped.

Q. He testified that he had stopped calling on you some time—

Mr. Thompson: The record reference?

Mr. Kelaher: 1811.

The Witness: I don't know that he even stopped until a few weeks ago.

By Mr. Kelaher:

Q. Just a minute.

Mr. Thompson: If you are quoting Mr. Savage, I want to see the record.

Mr. Kelaher: It is 1811. I gave you the quotation.

Mr. Thompson: Whereabouts?

Mr. Kelaher: He said he stopped calling on him some time in 1956.

2351 Mr. Thompson: I think your recollection is in error.

Mr. Kelaher: I know it is not in error, because I have checked it already.

The Witness: I bought tires off of him a couple of months ago.

Mr. Kelaher: Mr. Savage testified "I don't know if you remember, I said I turned this account a year ago over to another salesman. I don't know how long he may have been an Exide dealer—for the last three months. I haven't been in that station for 12 months."

The Witness: Who is saying this?

By Mr. Kelaher:

Q. This is Mr. Savage.

A. Which one?

Q. Mr. Eugene Savage?

A. Eugene? There is another salesman calls on me, representing the same outfit.

Q. That is right. That is the question I asked you.

A. Well, that is all right. You said Savage. When you say Savage, any salesman could call me and it is still Savage.

Q. Do you know the name of the current salesman from Burke-Savage?

A. Eugene.

Q. Isn't it a man by the name of Schramm currently calling on you?

2352 A. I don't know. I don't even know his name, to tell you the truth. Frank used to call on me, years ago. Frank Savage.

Q. Do you know that another man, other than Eugene Savage, has called on you also, from Burke-Savage Tire Company?

A. A young fellow. I don't know what his name was, I know he was with Savage.

Q. He is with Savage?

A. Yes.

Q. How long have you known Eugene Savage at Burke-Savage?

A. I guess I have known him about, around 10 years.

Q. Around ten years?

A. About that.

Q. And he was calling on you and selling you tires on a stocking basis when you had your contract station, isn't that correct?

A. On a stocking basis?

Q. Yes. Wasn't he selling U. S. Royal tires to you?

A. That's right, that's right.

Q. Did he also sell Armstrong tires to you?

A. That is right.

Q. Over this period you have had a number of conversations with Mr. Eugene Savage, I presume, isn't that correct?

A. A few, yes.

Q. Mr. Thompson, on direct examination, called your attention to a conversation appearing at transcript 2353 1812, which Mr. Savage testified to. Do you recall such conversation?

A. Well, no, not like that.

Q. Just how do you recall it?

A. Well, here is the whole thing: I haven't got the room to stock all kinds of tires. I told him whenever I would need tires, I would get them from him.

Q. And—

A. Which I do. I still get them.

Q. But do you get reconditioned tires?

A. I do.

Q. At the time of this conversation, did he offer you approximately 25 tires at a discount?

A. I can't recall that. There is always somebody coming in to offer you a discount for this or a discount for that.

Q. So actually you are not too certain as to just what the total conversation was?

A. No.

Q. And I think you also testified that your station is located near a Firestone store, is that correct?

A. That is correct.

Q. What determines the take-off? What is a take-off?

A. A take-off is a tire which comes into a show room, on a car, and people want white walls put on. That is what you call a take-off. In other words, the car may have been—the tire may have been driven 4 or 5 miles. That is what you call a take-off.

2354 Q. Is it possible to have a take-off, or would you have Firestone take-offs?

A. That is right.

Q. Would you have other brands, too?

A. Yes. If anybody wants them, but I don't handle them.

Q. But you do have Firestone take-offs?

A. That is right.

Q. Do you place those in your stock inventory of Firestone tires which are purchased from the Firestone stores?

A. I got them on the side. In other words, those tires, they are sold at a special discount, just like I buy them at a discount.

Q. Is it possible you could take some of those tires and put them in with your inventory of tires?

A. No, you couldn't very well on account of they have the stuff to spray cars underneath them, coat a car. And that is all over them.

Q. Mr. Savage testified, at transcript 1812, that you made the following statement to him during the time of this purported conversation: "I will tell you what I will do: I will take some Firestone take-offs from you because I can take some Firestone take-offs and digest them in with my own inventory so they will not show up as so-called foreign brands." Do you recall this conversation?

A. No, no, I don't recall that conversation, not in those words.

2355 Q. Not in those words?

A. I told him I would take the Firestone, but I didn't put the other to it.

Q. You told him you would take the Firestone take-offs?

A. I would take the Firestone, yes.

Q. Did Mr. Savage ever ask you to place U. S. Royal signs in your station after you became a lessee dealer?

A. Not that I recall. We don't place no signs around there.

Q. Why don't you?

A. Because the wind takes them away. And we got no place to put them.

Q. That is your only reason?

A. That is the only reason. There is no place to hang them, there are no windows to put them in. I even have a tune-up sign for the front, for tune-up motors, and that is always blowing over.

Q. Do you have window decals?

A. Very few.

Q. What do you have as service station identification on your windows?

Do you have a Firestone sign?

A. I have a small Firestone sign up there. My window is only about that wide. (Indicating.)

Q. Do you have an Exide sign up?

A. No, the only sign I got up is "Balance Wheels," and such as that.

2356 Q. And you have no brands advertised other than Firestone?

A. No.

Q. And what reason did you state for not putting up signs?

A. I haven't got the place to put no signs.

Mr. Thompson: You don't have to answer that.

Mr. Kelaher: I am asking him, your Honor—

By Mr. Kelaher:

Q. Are you familiar with the terms of your lease, your Atlantic lease?

A. Well, to a certain extent, yes.

Q. Do you know that under the terms of your lease, under the terms of your current lease, referring you to paragraph 7 of Commission's Exhibit 88-A-2, that you can not put up signs without the prior written consent of Atlantic?

Mr. Thompson: I object to the question. He is asking a legal opinion of a lay witness. He is asking him to interpret the provisions of an Atlantic document which is in the record.

Hearing Examiner Kolb: A question like that shouldn't be subject to legal interpretation, should it?

Mr. Thompson: No, sir. You can look at the lease 2357 and interpret it yourself, or I can or Mr. Kelaher here can.

Hearing Examiner Kolb: He is asking if he knew the clause was in the lease.

Mr. Thompson: I don't object to that question. But that is not the way I understood the question.

Mr. Kelaher: That is the question.

Hearing Examiner Kolb: I understood that to be the question, whether he knew that clause was in the lease.

Mr. Thompson: I have no objection to that question. Would you re-state the question, please, Mr. Kelaher?

Hearing Examiner Kolb: Read the question.

(Question read.)

Hearing Examiner Kolb: The witness may answer.

By Mr. Kelaheer:

Q. You may answer.

A. Answer what?

Mr. Thompson: That is the best question yet.

Mr. Kelaheer: Read the question to the witness.

(Question read.)

The Witness: No.

By Mr. Kelaheer:

Q. You did not know that?

A. No.

Q. Do you read your lease when you execute it?

A. Here is the whole thing: I read it, some of it, and some of it I don't.

2358 Q. Do you think an independent business man should have the right to advertise any products he chooses to advertise?

A. Here is the whole thing: It is just like an insurance policy. You read them, you can keep on reading them, and then when you have an accident and something comes up, you are not in that clause.

Q. And as a matter of fact, it is impossible for you to advertise any brand other than Firestone in your station without—

A. I don't know whether it would be or not.

Q. (Continuing.) —without the prior written consent of Atlantic?

A. I didn't pay no attention to that.

By Mr. Kelaheer:

Q. You stated on direct examination that you apparently are a very free man with respect to the operation of your business, is that correct?

A. In what way?

2359 Q. In any way you look at it. Can you buy what you want and sell what you want?

A. That's right.

Q. And are you able to make decisions as to how many hours your station can stay open?

A. Oh, no. Well, no, we sign a lease as to that. In other words, we open up at 7 and close at 11. Sunday we open up at 8 and close at 10.

Q. With respect to your hours of operation, if you decided to change your hours of operation, would you have the right to do that?

A. Well, if I wanted to make it longer, I could, yes.

Q. If you wanted to make it shorter, could you?

A. No, I wouldn't want to do that. I don't think I could.

Q. You don't think you could?

A. No, not under the lease.

Q. Because Atlantic wouldn't let you, under the lease?

A. I don't think so. The business calls for me to stay open those hours.

Q. That is right. So Atlantic controls the hours you stay open?

A. To a certain extent they do. If you have the help, why not stay open.

Q. You stated that you have received Commission's Exhibit 88-B, which is the so-called 11 point lease 2360 letter, and I will ask you to take a look at that again. (Handing.)

A. Is this the same one?

Q. Yes. This is attached to your current lease.

A. Yes.

Q. Isn't it a fact that you must meet Atlantic standards with respect to the 11 points enumerated in that letter?

A. Yes, you are supposed to do that.

Q. And isn't it a fact that if you do not meet their standards, your lease is subject to termination of 15 day's notice after receipt of the warning letter?

A. I don't know about that. I never got one of them.

Q. And you haven't read your lease in that connection, apparently?

A. I don't waste all my time reading those, to tell the truth.

2361 Mr. Kelaher; I will withdraw the question.

By Mr. Kelaher:

Q. Under your current lease, you are on what basis for the payment of rent?

A. Well, it tells you right there on payments.

Q. And you are on a flat basis, plus a percentage of your gross receipts?

A. That is right.

Q. Exclusive of gasoline. For that reason, under the terms of your lease, you pay a percentage, do you not—

A. Yes.

Q. (Continuing.) —you pay a percentage on your sales of TBA to Atlantic, is that correct?

A. That is right.

Q. And would you designate approximately what bracket you would fall into?

A. I guess I would fall around here.

Q. Around the 4 percent. The first 500 monthly, nothing, zero percent; next, 2000 monthly, 6 percent; next 2,000 monthly, 5 percent; next 2,000 monthly, 4 percent. And you would fall around the 4 percent?

A. Around that.

Q. Leading up to the 4 percent bracket, rather?

Have you signed a Firestone Associate dealership, do you recall?

2362 A. I don't recall that.

Q. I show you Commission's Exhibits 372 and 373. It is possible of course that your partner may have done some of this work.

A. Oh, that is true.

Q. This is an associate Firestone dealer agreement.

A. I never signed one of those.

Q. You never signed one?

A. Not that I know of.

Q. On direct examination you were asked if you had received certain letters from Atlantic, and in response to that question you asked if counsel was referring to letters you received a few weeks ago. Do you recall that question and answer?

A. Yes, on the last lease.

Q. Were you referring to the last lease?

A. Yes, that is right.

Q. You were asked about your purchase of accessories. Are you familiar with the term "hard parts" in service station operation?

A. What kind of parts?

Q. Hard parts, as distinguished from accessories.

A. Well, yes. You would take automobile accessories of all kinds.

Q. For example, ignition parts.

A. That is right.

2363 Q. When you stated that you buy from many jobbers, were you referring to that type of purchase also?

A. Yes.

Q. You do purchase accessories from the Firestone store?

A. Some, yes, very little.

Q. What do you buy from them?

A. Well, I buy some polish, a few little odds and ends that I need.

Q. Do you buy any batteries at all from the Firestone store?

A. Very seldom.

Q. And your tires, you stock Firestone tires exclusively?

A. Yes, I stock Firestone tires.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Do you have any further questions?

Mr. Thompson: I have one very important question, sir.

Hearing Examiner Kolb: Go ahead.

Redirect Examination by Mr. Thompson.

Q. You said in 1936 you bought a Lincoln?

A. Yes.

Q. What kind of car are you driving now?

A. Cadillac.

Mr. Thompson: Thank you.

2364 Hearing Examiner Kolb: That is all.

(Witness excused.)

2365 Hearing Examiner Kolb: On the record.

Mr. Kelaher: Before the next witness is called, in view of your ruling with respect to the testimony of Mr. Varnadore, which I assume you will make with respect to other dealers in this area, I would just like to note an exception at this time.

Mr. Thompson: What ruling are you talking of?

Mr. Kelaher: His ruling where, instead of receiving the testimony subject to a motion to strike, I believe he just struck the testimony.

Is that correct? As to the respondent Goodyear?

Hearing Examiner Kolb: The reason I did that is because I already disposed of the motion to strike as to the case in chief, and I see no reason to receive it subject to a motion to strike now since I have already ruled on it, to be consistent with my ruling.

Mr. Kelaher: I would like to preserve an exception.

Hearing Examiner Kolb: You have an exception under the rules on anything I do.

Mr. Thompson: It isn't necessary, is it, to note the exception?

Mr. Kelaher: No, but in view of the change of the ruling I thought I would call it to everyone's attention.

Mr. Thompson: May I call to the stand Mr. Charles G. McKaig?

2366 CHARLES G. McKAIG was called as a witness for the respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

Q. Would you give the reporter your full name, please?

A. Charles G. McKaig.

Q. Where do you live?

A. 4428 Wrenwood Avenue, Baltimore 12, Maryland.

Q. Mr. McKaig, my name is Thompson, and I represent the Atlantic Refining Company in this investigation. The gentleman on your right is the trial Examiner and presiding officer, Judge Kolb, from the Federal Trade Commission. The extremely handsome gentleman on your left, with gray hair, somewhat white, is Mr. Kelaher, who is my opponent in this case. He represents the staff of the Federal Trade Commission.

Mr. McKaig, are you an Atlantic lessee of a service station?

A. Yes, sir.

Q. Is your station located at 4420 York Road in Baltimore?

A. Yes, sir.

Q. About how long have you had that station?

A. 1953.

Q. Since about 1953, have you had three-year leases?

2367 A. Yes, sir.

Q. That is, the term of your lease has been three years?

A. Yes, sir.

Q. Since about 1953?

A. Yes, sir.

Q. Before you took that Atlantic station at 4420 York Road, had you had some prior experience in the service station business?

A. Yes, sir.

Q. Mr. McKaig, have you worked at that same station at 4420 York Road as an attendant before the war?

A. Yes, sir.

Q. And you were there for some time?

A. Quite some time, yes, sir.

Q. Do you recall the approximate dates?

A. I really don't know the dates that I was there.

Q. Would it have been about ten years, sir?

A. I imagine so.

Q. And you started before the second World War, did you not?

A. Yes, sir.

Q. Then for a time in the late 1940s did you work for Charlie Johnson?

A. Charley Johnson and Barclay.

Q. That is the station, is it not, which is now operated by Poole and Hunt?

2368 A. Yes, sir.

Q. And Poole and Hunt also used to work for Charlie Johnson?

A. Yes, sir.

Q. Then you moved from Charlie Johnson's station to your own station at 4420 York Road?

A. Yes, sir.

Q. When you first opened your own Atlantic station in 1950, did you carry TBA?

A. Yes, sir.

Q. Do you remember what brands?

A. Lee and AC filters, Purolator.

Q. What kind of batteries?

A. Lee batteries. Lee and Firestone, both.

Q. I am now talking, sir, about when you first opened the station in 1950.

A. That was Lee.

Q. When you first opened your station, was there a tire shortage? Were new tires difficult to get?

A. Not to me they weren't.

Q. You had a personal friendship and relationship with Charlie Johnson?

A. Yes, sir.

Q. Was he your supplier of tires?

A. At that time he was.

Q. Do you recall that about 1951 Atlantic began
2369 to promote the Firestone brand of TBA?

A. Yes, sir.

Q. At that time did you try the Firestone tire line?

A. I did.

Q. What brand of tires have you carried primarily since 1951?

A. Firestone.

Q. Do you like them?

A. Yes, sir.

Q. Were you pressured by Atlantic Refining Company to take on the Firestone line?

A. No, sir.

Q. What were your reasons for carrying the Firestone tires?

A. Well, it is a very good tire, and I had no complaint with them when I first started with them.

Mr. Kelaher: Would you repeat the last part of the answer?

(The reporter read the answer.)

By Mr. Thompson:

Q. Have you had any complaints with respect to Firestone tires over the years that you have been carrying them?

A. No, sir.

Q. Do you find there is a customer demand for them?

A. I would say yes.

Q. Do you get good delivery service on your Firestone tires?

A. Yes, sir.

2370 Q. Is the price okay?

A. Price is okay.

Q. In addition to the Firestone tire, do you handle U. S. Royal and Lee tires?

A. I handle any tire the customer wants.

Q. Is U. S. Royal one of them?

A. Well, I don't get too many U. S. Royals.

Q. Do you still handle Lee?

A. Once in a while.

Q. What kind of batteries have you been carrying since 1951?

A. Bowers.

Q. From whom do you buy your Bowers batteries?

A. From Bowers.

Q. That is direct from the manufacturer?

A. Yes, sir.

Q. May I ask you whether you have ever heard of a battery called the Best Battery?

A. Oh, yes.

Q. You have heard of it?

A. Yes, sir.

Q. Have you ever dealt in the Best Battery? Have you ever carried it?

A. No, sir.

Q. Why do you handle the Bowers battery? Just tell us in your own words your reasons, will you please?

2371 A. Well, it is a little cheaper as far as the battery is concerned. But it isn't any better than Firestone. And Firestone, in my opinion, has a better type battery.

Q. But you still carry Bowers?

A. I still carry Bowers.

Q. Turning to accessories, do you carry them, sir, at your station?

A. Yes, sir.

Q. Do you carry a large variety of accessories?

A. No, sir.

Q. Who are your principal accessories suppliers?

A. Belvedere Sales and Mr. Kilner.

Q. Is that K-i-l-n-e-r?

A. Yes, sir.

Q. May I ask you, sir, about filters. What type filters do you carry?

A. Lee, Purolator, and AC.

Q. Do you carry Voit hose?

A. Yes, sir.

Q. Do you carry Champion spark plugs?

A. Yes, sir.

Q. And Purolator, Lee, Voit, and Champion plugs are not in the Firestone line of accessories, are they?

A. I don't think so.

Mr. Kelaher: Which ones did you mention?

2372 Mr. Thompson: Purolator and Lee filters, Voit hose, and Champion plugs are not in the Firestone line, was my question.

By Mr. Thompson:

Q. Do you carry waxes and polishes?

A. Yes, sir.

Q. Is 7-Up one of your brands?

A. 7-Up? Number 7.

Q. Is Bodysheen another?

A. Yes.

Q. Bodysheen—

A. Bodysheen, Autobrite, Vista Wax, and Number 7 Wax.

Q. In effect, do you just shop around for accessories?

A. Shop around only through these two dealers. That is all I get.

Q. And you buy practically nothing from Firestone?

A. Very little.

Q. Are these non-Firestone products to which you referred openly displayed at your station?

A. All products are displayed at the station.

Q. Just as a matter of curiosity, what kind of racks do you use for your Bowers batteries?

A. Bowers batteries, I use Firestone racks.

Q. Without a Firestone battery in the rack?

A. That is right.

2373 Q. Are these various accessories to which you have referred on your shelves?

A. In the window.

Q. They are in plain sight?

A. Plain sight.

Q. Visible to anybody who comes to the station?

A. Anyone at all, yes, sir.

Q. Do you sell them on Atlantic credit cards?

A. Yes.

Q. Have you ever been criticized by Atlantic for doing that?

A. No, sir.

Q. In fact, have you ever been criticized by Atlantic for carrying Bowers batteries?

A. No, sir.

Q. Have you ever been criticized for carrying any of these non-sponsored accessories you have been talking about?

A. No, sir.

Q. Have you ever been criticized for handling, when you do, the Lee tire or the U. S. Royal or any other brand of tire?

A. No, sir.

Q. Has anybody from Atlantic ever told you to stop buying these things?

A. By all means, no.

Q. Have they ever told you to get them out of your station?

A. No, sir.

2374 Q. Have they ever told you to hide them?

A. No, sir.

Q. Who decides what you buy, Mr. McKaig?

A. I do.

Q. Do you feel free to buy any TBA you want to buy?

A. I do.

Q. Do you feel free to buy TBA from any source you like?

A. Yes, sir.

Q. Do you feel that you have to buy Firestone tires because of Atlantic?

A. No, sir.

Q. Do you think Atlantic would cancel your lease if you stopped buying Firestone tires?

A. Not in the least, no, sir.

Q. Did anyone from Atlantic ever tell you you had to buy Firestone tires?

A. No, sir.

2375 By Mr. Thompson:

Q. Does Atlantic from time to time inspect your station?

A. Yes, sir.

Q. When an inspector comes to your station does he ever comment unfavorably upon the fact that you have all these non-Firestone TBA items?

A. No, sir.

Q. Is the matter ever mentioned to you?

A. No, sir.

Q. Mr. McKaig, do you know a man named Elmer Lang—L-a-n-g?

A. I don't recall him, no.

Q. Do you know the R. J. Loock Company, or have you heard of it?

A. I have heard of it, yes, sir.

Q. I am going to read you a statement made by Mr. Lang in this proceeding last November, and ask you to comment upon it.

Mr. Lang appeared here as a witness called by my friend, Mr. Kelaher, and was asked these questions.

Mr. Kelaher said, at Page 1866 of the transcript of testimony, he asked Mr. Lang a question to which Mr. Lang replied: "Mr. McKaig purchased some filters from us only on a fill-in basis, not as a stocking dealer."

Then the question was, "Do you still call on Mr. McKaig?"

The answer is, "No, I do not."

Then the question was, "Why did you stop calling on him?"

2376 The answer was, "For the reason that the volume I received from Mr. McKaig was not sufficient to warrant my contacting him any more."

Then the question was, "Did you ever have any conversation with Mr. McKaig concerning the matter?"

And the answer, "I talked to Mr. McKaig about a number of items that he carried, and particularly his oil filter line, and he told me that he was unable to purchase from us on a stocking basis."

Then he was asked when that conversation took place.

The answer was, "That was around the early part of 1956."

And then Mr. Kelaher said, "Did he tell you the reason why he was unable to purchase from you?"

And Mr. Lang answered, "He—" that is, referring to you, Mr. McKaig—"said he was mostly obligated to buy his TBA items from Firestone."

Now, I ask you, having repeated Mr. Lang's statement, whether you ever had any such conversation with Mr. Lang?

A. I don't recall ever having any conversation with him.

Q. Did you say to Mr. Lang the things that he attributed to you?

Mr. Kelaher: Objection, your Honor. He said he didn't recall the conversation.

Hearing Examiner Kolb: Overruled. The witness may answer.

2377 By Mr. Thompson:

Q. Did you say to Mr. Lang the things that he attributed to you?

A. No, sir.

Q. Did you ever tell Mr. Lang that you were obligated to buy your TBA from Firestone?

A. No, sir.

Q. About 1953 were you visited by an investigator for the Federal Trade Commission; do you recall?

A. I don't recall offhand.

Q. Do you recall whether anybody asked you to make and sign a statement in this investigation for the Federal Trade Commission?

A. No, sir.

Mr. Thompson: Thank you very much, Mr. McKaig. Those are all the questions that I have. My friend, Mr. Kelaher, may want to ask you a few questions.

I do have one more question.

By Mr. Thompson:

Q. What kind of a car do you drive?

A. I drive a Packard.

Mr. Thompson: Thank you.

Cross-Examination by Mr. Kelaher.

Q. Mr. McKaig, do you recall the months when
2378 you became an Atlantic lessee dealer?

A. The month of February.

Q. February 1950?

A. That's right.

Q. And how long were you on a year-to-year lease?

A. How long? I don't recall the dates. I wouldn't know.

Q. Approximately. Are you now on a three-year lease?

A. Now on a three-year lease.

Q. When was that executed? When was the current lease executed?

A. Last month.

Q. That was June 1958?

A. That's right.

Q. Was your prior lease a three-year lease?

A. Yes, sir.

Q. So that would have put it back to June 1955, is that correct?

A. Yes, sir.

Q. And then prior to that were you on a three-year lease or a one-year lease?

A. A three-year lease.

Q. So that would put it back to June 1952.

A. Then it was one.

Q. Prior to that it was one year?

A. Yes, sir.

2379 Q. Mr. McKaig, I am going to show you Commission's Exhibits 88-A-1 and A-2 and A-3, and 88-B, and ask you if they constitute the documents pertaining to your last lease?

A. They do.

Mr. Thompson: May I have the question now?

Hearing Examiner Kolb: Read the question.

(The reporter read the question.)

By Mr. Kelaher:

Q. Reviewing your direct testimony for just a second: You stated that when you first went into the station you handled Lee tires and Lee batteries?

A. That is right.

Q. And Firestone batteries; is that correct?

A. Yes.

Q. And were you handling those products when Atlantic began to sponsor Firestone TBA?

A. Yes, sir.

Q. And at that time you switched over to Firestone tires?

A. To Firestone.

Q. And at that time did you switch over to Bowers batteries?

A. Yes, sir.

Q. And you have continued to carry Bowers batteries since that time?

A. Yes, sir.

Q. Would you recognize your signature if you saw it?

2380 A. I probably would.

Mr. Kelaher: Mr. Examiner, I now show the witness a signature and ask him to state if that is his signature (Handing).

The Witness: That is.

By Mr. Kelaher:

Q. Mr. McKaig, I would like to ask you if you recall being interviewed by an attorney-examiner of the Federal Trade Commission on March 19, 1953?

A. I don't recall that.

Q. You don't recall?

A. No, sir.

Q. Does the fact that your signature appears on there indicate to you that you signed that particular statement?

Mr. Thompson: Just a second. When I have seen it you can show it to him, Mr. Kelaher.

By Mr. Kelaher:

Q. Mr. Witness, I show you this document and ask you to examine it, and after that I will ask you a question or two about it (Handing).

Mr. Thompson: Did you read it, Mr. McKaig?

2381 By Mr. Kelaher:

Q. I call your attention to the statement at the bottom of the document, which is printed thereon, and I will read

"I certify that the information recorded above and which I have read was given by me in response to the questions of the attorney-examiner, Federal Trade Commission, whose name appears below, and said information is, to the best of my knowledge, factual and correct. Charles G. McKaig, 1953."

And 3-19 appears on the first part of the document. The attorney-Examiner, who also signed, is Bartley Garvey, Attorney-Examiner, Federal Trade Commission.

Does that refresh your recollection with respect to the document?

A. Well, it could be possible. If that is the man out there—

Q. Mr. Garvey?

A. Mr. Garvey.

Q. Do you remember him being out there?

A. No, I don't.

Q. Do you remember any FTC man being out there?

A. There was only one man out there, to my knowledge, and he was so rude I didn't think much of that man was out there. If that is him, I don't remember him.

Q. But you have identified this as your signature?

A. That's right.

2382 Q. The man who was at your station, Mr. Garvey,

I should say, quite obviously submitted this statement to you for your signature. I would like to compare that statement with your direct examination here today.

Mr. Thompson: Have you put the date of the statement on the record?

Mr. Kelaher: I have put it on. March 19, 1953.

By Mr. Kelaher:

Q. You stated on direct examination that you carried Lee batteries and Firestone batteries at the time of the change-over in 1951. I am talking now about the time of the Atlantic sponsorship of Firestone TBA. Correct? it:

A. That's right.

Q. Your signed statement states: "He changed over to Firestone from Lee and Exide at the time of the change-over by Atlantic because Atlantic changed."

In your direct testimony—

Mr. Thompson: May I—

Mr. Kelaher: I beg your pardon?

Mr. Thompson: I have an objection to the form of the question.

Mr. Kelaher: There is no question yet.

Mr. Thompson: Simply, Mr. Kelaher, in that you did not bring out who wrote the statement that you read, and the inference on the record would be that the witness 2383 had written it; whereas, as is apparent to anybody who look at that document, the statement which you quoted is in an entirely different hand writing.

Mr. Kelaher: There is no objection to that statement going on the record. I showed it to the witness and I asked him to read the certification at the bottom.

Mr. Thompson: My objection is to the fact—

Mr. Kelaher: Your Honor, I am not going to spend any time arguing. I don't even have a question. I don't think this is the time to be interrupted.

Mr. Thompson: Whether you choose to spend time arguing or not is in the presiding officer's discretion. My objection is to the fact—

Mr. Kelaher: What is your objection?

Mr. Thompson: Your question—

Mr. Kelaher: There is no question.

Mr. Thompson: Your question indicates that that man wrote that statement, whereas you know he didn't.

Mr. Kelaher: I didn't say that. I read the statement.

Mr. Thompson: You read it as his statement.

Mr. Kelaher: I did not. I read it as a statement signed by him. It is obvious he signed it.

Hearing Examiner Kolb: There is no pending question.

2384 Mr. Thompson: No. I have an objection to the form of the question, unless it is brought out that the hand writing in which the statement appears is not this witness' handwriting, but was written by somebody else.

Mr. Kelaher: We have no objection to bringing that out, if that satisfies counsel.

Mr. Thompson: That is so stipulated then?

Mr. Kelaher: That is so stipulated.

And of course it is stipulated that he read it before he signed it, I assume.

Mr. Thompson: That is not stipulated. You have to bring that out from the witness.

Mr. Kelaher: I brought that out in reading the certification. I think that will speak for itself.

By Mr. Kelaher:

Q. First of all, on your direct examination you didn't mention that you were carrying Exide batteries prior to the switch-over in or about 1951, did you?

A. No, I didn't.

Q. And at that time you were carrying Exide batteries?

A. No. Not that I know of.

Q. You signed the statement to the effect that you were carrying them. Which is correct?

A. I didn't carry Exide batteries.

Q. It is right here in black and white that you 2385 carried Exide batteries.

A. That is what it looks like.

Q. That is not what it looks like, that is what it is. Secondly, you stated, on direct examination—

A. He could only have wrote part of that after it was signed, and filled in the rest.

Q. I call your attention to the fact that you state right

on there that you read the entire statement before you signed it.

A. That is my writing.

Q. That is your writing?

A. That's right.

Q. And you also stated on direct examination that you have been carrying Bowers batteries since the time Atlantic began to sponsor Firestone batteries, which was on or about 1951, isn't that correct?

A. That is correct.

Q. Your signed statement shows that you were carrying Firestone batteries on March 19, 1953, and I show you your statement again. Which is correct?

A. It is on here.

Q. It is on here. So you were carrying Firestone batteries and not Bowers batteries on March, 1953?

A. I could have been both then.

Q. You didn't mention Firestone batteries on your 2386 direct examination.

A. How do you know that? He didn't put it down.

Q. I know it because I was sitting here listening and you didn't mention it.

A. On there.

Q. You didn't mention it on here. On your direct examination you didn't mention the fact that—

A. I didn't have any Exide batteries.

Q. I am talking about Exide batteries and Bowers batteries since March, 1951. And as a matter of fact you have led this Court to believe that you carried nothing but Bowers batteries since about March, 1951 when in fact you have a signed statement that you were carrying Firestone batteries on March 19, 1953. Isn't that so?

A. I carried both batteries, Firestone and Bowers.

Q. You made no mention—go ahead.

A. The majority are Bowers.

Q. You made no mention of Firestone on your direct examination.

Mr. Thompson: Let the witness complete his answer, please. And stop arguing with him.

By Mr. Kelaher:

Q: You go ahead.

A. I carried Bowers and Firestone, both.

Q. This is the first mention made of Firestone. You have carried Firestone batteries since the change-over, have you not?

2387 A. Sure.

Q. Why didn't you tell that to counsel when he asked you the question on direct examination?

A. Did he ask how many batteries we carried?

Q. I think he did.

A. You only think so?

Q. He did. You told him you carried Bowers batteries?

A. That's right. We carry Bowers Batteries and Firestone, both.

Q. This is the first indication we have of it.

So we have the record straight on that.

You gave a very nice reason why you changed over to Firestone TBA at the time Atlantic began to sponsor it. And the reason you gave was that it was "a very good tire and I had no complaints with them when I first started with them."

Is that the only reason you changed to Firestone tires?

A. I left Charlie Johnson, and when Firestone took over—when Atlantic took over I changed to Firestone.

Q. The reason given was that Firestone was a good tire.

A. Well, it is a good tire.

Q. But that wasn't your real reason for changing to the Firestone TBA, was it?

A. The real reason for changing over to—

Q. The real reason why you began to handle Firestone TBA was what?

2388 A. I wasn't with Charlie Johnson any more. I would buy wherever I wanted to buy.

Q. I am talking about March, 1951, when you had your own station. Is that correct?

A. Yes, sir.

Q. What do you say the reason was why you changed to Firestone TBA?

A. I liked Firestone.

Q. Let me read from your signed statement: "He changed over to Firestone from Lee and Exide at the time of the change-over by Atlantic because Atlantic changed." That was given as your reason on March 19, 1953, as to why you changed to Firestone TBA.

Mr. Thompson: Is that a statement or question?

Mr. Kelaher: I am asking him a question. A series of questions.

A. Firestone had the Lee before they changed over.

By Mr. Kelaher:

Q. Who had the Lee?

A. Atlantic.

Q. Atlantic had Lee?

A. That's right. They changed over to Firestone. Right?

Q. That's right.

A. So I changed over to Firestone.

Q. And you changed because Atlantic changed, did you not?

2389 A. Not only that reason, no. Because I found out that Firestone is a very good tire, and is more well advertised.

Q. Isn't it a fact that Lee also has good consumer acceptance in this area?

A. That could be.

Q. It is a fact, isn't it? And isn't it a fact that your price was lower on Lee than it was on Firestone tires?

A. Lower?

Q. Lower. That is correct.

A. Not to my knowledge it wasn't any lower. It could be.

Q. And the fact of the matter is, Mr. McKaig, that you were influenced by Atlantic's statistics to change to Firestone TBA?

A. No, sir.

Q. You gave that as your reason in your signed statement. You said you changed because Atlantic changed?

A. I wasn't influenced by them.

Q. You weren't influenced by them. You just changed because Atlantic changed, is that correct?

A. Atlantic hasn't influenced me to do anything.

Q. However, you go along with Atlantic, don't you?

A. I work for Atlantic.

Q. That's right. And when Atlantic stopped sponsoring Lee and Exide you switched to Firestone TBA, didn't you? That is what the facts show.

2390 A. I got Firestone tires, but I didn't get any of the TBA.

Q. You also got Firestone batteries, according to your signed statement.

A. Firestone batteries?

Q. And you also got some Firestone accessories?

A. It could have been then. I don't do it now.

Q. You still carry Firestone tires, don't you?

A. Sure.

Q. And you stock them.

Getting back to March, 1951, or thereabouts, when Atlantic began to sponsor Firestone TBA in the Baltimore area, to your knowledge, did other Atlantic service stations change over to Firestone TBA?

A. I wouldn't know.

Q. Let me read your signed statement.

A. Other Atlantic stations?

Q. Other Atlantic dealers.

A. What do I have to do with other Atlantic dealers?

Q. I am asking, of your knowledge, whether or not you knew they did change?

A. Not to my knowledge. I don't know what they do.

Q. This is what you said on March 19, 1953: "The only person I know who didn't change over was C. H. Johnson. He was Lee distributor under old program—stayed with Lee, he thinks." So at that time you knew that the 2391 entire market changed over to Firestone TBA, did you not?

A. How would I know? I don't know the dealers.

Q. You know all within your knowledge changed over. Isn't that a correct station?

A. It could be one station.

Q. That is being—it would be rather unusual if you knew only one Atlantic station in the City of Baltimore, wouldn't it?

A. I don't know whether he changed over or not.

Q. You know more than one Atlantic service station in the City of Baltimore, isn't that correct?

A. That is correct.

Q. And your statement on March 19, 1953, was that the whole market changed over, all that you knew, all the Atlantic service stations that you knew, changed over to Firestone TBA with the exception of Mr. Johnson.

Mr. Thompson: I object to the form of that question. I would like to see the actual statement.

Mr. Kelaher: Here it is. I read the actual statement, verbatim.

Mr. Thompson: I move the last bit of testimony by Mr. Kelaher be stricken from the record. It is a complete

reverse twist on what this man actually signed, written by the Federal Trade Commission examiner. He did not say that the whole market changed to Firestone. All he 2392 said was, "The only person I know who didn't change over was Johnson."

Mr. Kelaher: What does that mean to you?

Mr. Thompson: You are trying to make it appear that this witness has said that the Atlantic dealers, generally, changed to Firestone tires at this time. He has no knowledge of that, and he said that is a fact.

Hearing Examiner Kolb: Let the record stand as it is.

Mr. Kelaher: I might add that I did read that statement verbatim. If not, I will read it again.

Hearing Examiner Kolb: No, you have it in there.

Mr. Kelaher: I think it is verbatim.

By Mr. Kelaher:

Q. In answer to a series of questions by counsel for respondent, Atlantic, you stated that you had freedom of choice with respect to the TBA you purchased, and that Atlantic never put any pressure on you to purchase Firestone TBA, or that you never bought any TBA for that purpose, and so on, for that reason.

Now let me ask you a question. Did Atlantic salesmen or personnel ever indicate in any way to you that they expected you to buy some Firestone TBA?

A. No.

Q. If they never did, let me read your statement on that, and I quote: "You are expected to buy at least 2393 some Firestone." According to your signed statement it is obviously inconsistent with your direct statement, but it certainly indicates that Atlantic expects you to buy some Firestone TBA, and in your mind you know that they expect you to buy some Firestone TBA; isn't that correct?

A. I never buy any. Very seldom I ever buy any TBA

from Firestone. I buy from Kilner and from Belvedere Sales.

Q. By Firestone TBA, I am referring to tires, batteries, and accessories. You have testified that you stock Firestone tires?

A. That is correct.

Q. That is correct?

A. Yes, sir.

Q. And also your signed statement showed that you also stocked Firestone batteries in March 19, 1953?

A. I still buy Firestone batteries.

Q. And you still buy Firestone?

A. Firestone and Bowers.

Q. And then your accessories are still purchased, some of your accessories are also purchased from Firestone?

A. I said very few.

Q. You said very few. But the point is that you are expected to buy some, at least some Firestone because of Atlantic's sponsorship of Firestone TBA, isn't that correct?

A. No. I don't have to buy anything from them.

2394 Q. Then you say even today, in the light of your written statement, that you are not expected to buy some Firestone TBA?

A. I don't buy any Firestone TBA now.

Q. You are confusing TBA with accessories. Are you expected to buy some Firestone tires?

A. Am I expected? No. I can buy them wherever I want to buy them.

Q. You buy Firestone, don't you?

A. Sure, I buy Firestone tires.

Q. And the reason you buy them is because Atlantic is sponsoring Firestone?

A. Not necessarily so. If you want to come in and buy another brand you can buy it.

Q. I am not talking about other brands. You are getting away from the point. I asked why you buy Firestone and you stated in 1953 that you were expected to buy at least some Firestone?

A. No, not expected.

Q. I will let the record speak for itself on that.

Mr. Kelaher: I don't think I have any further questions of this witness.

Redirect Examination by Mr. Thompson.

Q. Is Bower your primary battery line?

2395 A. Yes, sir.

Q. Has it been for some years?

A. It has.

Q. When you took your station, did Atlantic recommend Firestone to you?

A. Never recommended any battery to me. I bought what I wanted to buy.

Mr. Thompson: That is all.

Thank you.

Hearing Examiner Kolb: That is all.

(Witness excused.)

Is that all for this morning?

Mr. Thompson: We have one more witness scheduled.

2396 WILLIAM HENRY LEONARD, was called as a witness for the respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Ballard.

Q. Mr. Leonard, as I told you, this gentleman is Mr. Kolb, the Examiner for the Federal Trade Commission and acts as the judge in these proceedings. The gentleman across the table is my opponent, Mr. Kelaher. He represents the Federal Trade Commission.

Would you state your full name?

A. William Henry Leonard.

Q. Mr. Leonard, you are an Atlantic lessee dealer, is that correct?

A. That is right.

Q. What is the address of your station?

A. Fallsways and Center Streets.

Q. That is in Baltimore?

A. Yes.

Q. And how long have you had that station?

A. Since 1948.

Q. When you came into that station in 1948, was the tire shortage still in effect?

A. Yes.

2397 Q. Do you remember about how long it lasted?

A. Not exactly. But as close as I can remember, I would say a year to a year and-a-half.

Q. Would you give us the month in 1948?

A. October 1948.

Q. What kind of tires did you handle at your station when you first came in?

A. Lee, US Royal, Mansfield.

Q. Where did you buy your Lee tires?

A. Charlie Johnson, through Atlantic.

Q. And you US Royal tires?

A. Burke-Savage.

Q. And Mansfield tires?

A. R. J. Loock.

Q. What batteries did you handle?

A. Exide and Bowers.

Q. Did you handle any Firestone batteries?

A. Not when I first went in. In fact, I didn't know they had Firestone batteries when I first went in.

Q. Your station is in a commercial area, is it not?

A. Yes.

Q. What kind of customers do you have, primarily?

A. Mostly truckers and business houses with fleet accounts.

Q. Are they price conscious?

A. Very much so. They can buy almost as cheap 2398 as I can; in some cases cheaper.

Q. There came a time when the Atlantic Refining Company stopped selling Lee and Exide and changed to Firestone?

A. That is right.

Q. Did you take up the Firestone brand at that time?

A. I started them a few at a time, with the idea of getting rid of the stock that I had on hand.

Q. Speaking of tires, why did you change to Firestone on tires?

A. Well, I couldn't sell Lee tires, and—I could sell a few, but I couldn't sell them as well as Firestone. I like the brand, I like the service. I figured I could sell those easier.

Q. What about Firestone prices?

A. Well, we first went in, we couldn't buy Firestone tires for the same price that we bought US or Lee or Mansfield.

Q. Are you speaking of when you first went into the station?

A. When I first went into the station. But when Atlantic started handling the Firestone tires and TBA then we got a better discount that brought it down as cheap as we could buy the others, and in some cases cheaper.

Q. What about batteries? When did you shift on batteries?

A. I handled a few when—I would say a good number when they were wet. But when they started dry-charging batteries, I switched completely to Firestone because 2399 of the stocking problem. I have no self life on those. They were, as far as I know, the first ones that came out with dry-charge batteries, and that was ideal for my station because of stocking and an easy way to handle them.

Q. Speaking of accessories—and by “accessories” we don’t include repair parts here; we include the lighter kinds of accessories, waxes, polishes, chemicals, that kind of thing—where do you buy your accessories today?

A. We buy from Firestone, R. J. Loock, R. W. Norris, B-B Auto Supply, we buy a little bit from J. R. Hunt once in a while. They are the main ones. We buy some from Behrend Brothers. They are right across the street from me.

Q. These accessories that you buy from these supply houses, do you put them on your shelf?

A. Oh, sure.

Q. Are they openly displayed?

A. Yes.

Q. Firestone as well as non-Firestone?

A. Yes.

Q. Does the Atlantic salesman see them when he walks in?

A. Sure does.

Q. Did the Atlantic salesman ever criticize you for carrying those?

A. No. As long as we sell stuff, he doesn't care.

Q. Did anyone from Atlantic ever tell you that you 2400 had to buy Firestone?

A. No.

Q. Do you feel free to buy any TBA you want?

A. I do. I do it now. Always have.

Q. Do you get along well with your Atlantic salesmen?

A. Fine.

Q. Do you find them of help to you in your TBA matters?

A. They will help us with anything that he possibly can. A lot of times if we have a problem they will help us with it. Usually we don't have too many difficulties.

Q. Comparing them with the salesmen from the Norris company or the Loock company, would you find the Atlantic salesmen more helpful or less helpful?

A. They would be more helpful for the main reason he is usually a man who has been in the service station and has been trained to know what a service station needs.

Q. In the course of your being in this station, your lease has been renewed quite a number of times, is that right?

A. That is right. Fairly often.

Q. What is the term of your current lease?

A. Three years.

Q. When your lease is renewed, what is the procedure?

A. Well, a salesman usually gets in touch with me. Of course, I am not always at the station. I have another interest. The salesman usually calls me up in the evening, 2401 ing, leaves word at the station also, and asks me to arrange to meet him some way, when I am going to be there, the exact time, so that he can get in touch with me and get the lease signed.

Q. Do you read those leases over carefully before you sign them?

A. No. I am a bad businessman. I don't think there is any need to. I haven't found any yet. On rainy days I do that kind of stuff.

Q. Mr. Leonard, you know of course—you are familiar with the Burke-Savage Company?

A. Yes.

Q. Do you know a representative of that company named Eugene Savage?

A. Very well. Ever since I have been in the station.

Q. You know, I believe, that Mr. Savage testified in these proceedings in November 1957?

Mr. Kelaher: Objection. How does he know?

By Mr. Ballard:

Q. Do you know that fact?

A. I have heard it. This thing has been going around through grapevine and whatnot. I have heard a lot of things about it. I have heard it. Where, I don't know, but I have heard it.

Q. I would like to read you some material from the record of Mr. Savage's testimony, Page 1755 or thereabouts. Mr. Savage was being questioned by Mr. Kelaher.

2402 Mr. Kelaher said to him: "Have you lost the business of any Atlantic service stations since you have been an outside salesman?"

Mr. Savage answered, "Yes. I called on a station at Fallsway and Center, Leonard's Atlantic station."

That is your station he was referring to?

A. That is correct.

Q. "At one time previous to 1953 he carried all US Royal tires." Is that a correct statement?

A. No.

Q. You, in fact, carry—

A. I carried other ones, too. In fact, I think there was always Lee tires in there, and probably a couple—I don't carry too many tires but I had Lee, US, Mansfield, and I would have had a couple of Goodyears, Goodrich.

Mr. Kelaher: Your Honor, in connection—how did you phrase that? Did you ask what he carries or stocks or handles?

Mr. Ballard: I asked if it was a true statement. The statement Mr. Savage made, Mr. Savage claimed that Leonard's Atlantic carried all US Royal tires. I asked if that is a correct statement.

By Mr. Ballard:

Q. Mr. Savage next said, "He carried a complete stock of US Royal tires, and today I do not call on this 2403 station because he now handles Firestone tires." Is that last statement correct? Does he call on you today?

A. He doesn't call on me, but why I don't know.

I probably do. I slowed down buying from him. I would buy very little from him. The only reason I haven't got the sales.

Mr. Kelaher: What was the last statement?

The Witness: The only reason I don't buy from him is because I don't have a sale for the US. I sell a few, but I always go up to their store to pick them up. I sell what the customer wants. If he asks for US, if he prefers US, that is what I will sell him.

By Mr. Ballard:

Q. The next question Mr. Kelaher asked Mr. Savage was: "Did you have any conversations with Mr. Leonard concerning his purchase of tires from you?"

The answer that Mr. Savage gave was this: "I would say it was approximately 1954, and at that time he told

me that he was going to handle Firestone tires because the oil company has a tie-in with them."

Would you tell the Examiner what you were referring to there?

A. I don't know as to—

Mr. Kelaher: Objection. I don't think that is a proper question, in the form it is asked. He didn't ask him 2404 whether he said it or not. He asked him to tell you what he meant.

By Mr. Ballard:

Q. Did you say that to Mr. Savage?

A. I would say yes. It may not have been the exact words, but it is about the gist of it.

Q. To what were you referring?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Objection overruled.

By Mr. Ballard:

Q. You may answer.

A. I don't know as to when that was, but I do know that when Atlantic sold Lee and Exide and the rest of that line, I changed over to Firestone. I told Gene I was going to handle it because we now had a connection where we could buy the Firestone line and get it at a price where we could sell it.

Mr. Kelaher: Would you read the answer?

(The reporter read the answer.)

By Mr. Ballard:

Q. In response to a previous question—this is on Page 1754—Mr. Savage testified: "I have also tried to put up US decals and US Royal metal signs and other advertising materials, and the service stations would not allow me."

Later, at Page 1820, Mr. Thompson questioned Mr.

Savage, and he said: "You made a kind of a general
2405 broad statement that you couldn't put up signs at
Atlantic stations. Which of the size are you talking
about?" That is at Page 1820.

Mr. Savage said, "Well, the station that I mentioned
here, we couldn't, Leonard's Atlantic." And then he men-
tioned some other stations.

Do you recall Mr. Savage ever attempting to put up a
US Royal metal sign and US decals on your station?

Mr. Kelaher: Objection. I don't think that is what the
testimony is.

Mr. Ballard: I will read it again, Mr. Kelaher:

"I have also tried to put up US decals and US Royal
metal signs and other advertising materials and the service
stations would not allow them." That is 1754.

I am asking the witness if he recalls any such attempt
on the part of Mr. Savage at his station.

Hearing Examiner Kolb: You may answer.

The Witness: He may have asked. I don't exactly re-
member. But we did have small signs up. We don't put
up any signs because we have no place to put them. We
have one window. If we put any signs up we can't see out.

We have very few signs. We have a few of the fillers
that we put in tires, a couple of small ones that go in one
of the side windows, and little stands that the tires rest
in, tripods, or something, whatever you call them. We

had all brands in those. We had Lee, Armstrong, in
2406 fact I probably had some of them laying around the
station yet with those names on them. And when
Firestone sent theirs down, we used theirs.

Mr. Kelaher: What is this you are referring to?
Signs?

The Witness: Yes, small stands, real small stands.

Hearing Examiner Kolb: Tire stands.

The Witness: Because we don't have any place to put

big ones. Once in a while we get a banner we can tie up somewhere.

By Mr. Ballard:

Q. Mr. Leonard, you operate another business?

A. That is right.

Q. What business is that?

A. That is a drilling business.

Mr. Ballard: I have no further questions.

Cross-Examination by Mr. Kelaher.

Q. I would like to discuss your lease for a moment. You began your station operation in October 1948; is that correct?

2407 A. That is right.

Q. And were you on a year-to-year lease at that time?

A. My station, I think, operates a little different than others. I understand that is a sublease.

Q. You understand what?

A. I am under the impression it is a sublease. I am not positive.

Q. You don't know whether you are on a lease or sublease, do you mean?

A. I understand Atlantic owns most of the grounds of their stations and then lease them to the operator. Whether I am correct or not, I don't know. This particular one they don't own the ground to start with. So whether that makes me a lessee or not—

Q. Who do you lease from?

A. From Atlantic.

Q. When did you begin to lease from Atlantic?

A. In 1948.

Q. Was your first lease a year-to-year lease or for a longer term?

A. I don't remember.

Q. You don't remember?

A. No, sir. I probably have it in the safe.

Q. When did you execute your last lease?

A. I do know our leases are different now than
2408 they were, because for some unknown reason we couldn't get a long lease before.

Q. You couldn't?

A. No. But I was under the impression, I was told, that it was because the people who owned the ground wouldn't give a long-term lease to the Refinery.

Q. Now do you think you can remember when you signed the last lease?

A. No, I don't think so.

Q. Is it a three-year lease or one-year lease or what?

A. It is a three-year, the last two or three leases. But I don't know when I signed the last one. It is in the safe at the office.

Q. Do you know when this lease expires?

Hearing Examiner Kolb: What difference does it make? He said his last two or three leases were three-year leases.

Mr. Kelaher: I am trying to establish which particular leases he entered into. There has been a change in Atlantic's form of leases over the years. I am trying to get some specificity in the question.

Mr. Ballard: May I suggest that you can't establish that any way but to find the leases and show it to him.

Mr. Kelaher: I can establish it from his recollection, if that is possible.

2409 By Mr. Kelaher:

Q. In any event, your last two leases were for three years?

A. Yes.

Q. That you know?

A. I think this last one expires this coming year. I am not sure—next year.

Q. You think it expires in 1959?

A. Yes. In fact, I don't think the station will be there in 1959.

Q. Why is that?

A. Because the expressway will probably close it down.

Q. So you apparently entered into a lease about 1956?

A. I think it was later than that. I am not positive.

Q. You stated, I believe, on direct examination, that you have known Mr. Eugene Savage for some time; is that correct?

A. Yes.

Q. And did that relationship begin when you became an Atlantic lessee?

A. Right.

Q. Did he first start calling on you at that time?

A. Yes.

Q. He sold you US tires on a stocking basis for some years, you testified; is that correct?

A. What do you mean by "stocking basis"?

Q. Do you know what the word "stocking" means? In quantity.

2410 A. Whatever I wanted. Never sold me US tires in large quantities. Armstrong.

Q. Armstrong?

A. But not US.

Q. He sold you Armstrong on a stocking basis, is that correct?

A. Yes, that is right.

Q. And he also sold you US Royals?

A. A few US. Mostly Armstrong.

Q. And that continued for a period of some time, apparently, didn't it, from October 1948 up until when?

A. I wouldn't say it started in 1948.

Q. When did it start?

A. It took a little time before I knew what was going on there.

Q. When did this start?

A. I would say that it was after the tire situation had eased up. I would say it was probably a year or two years after I went in there. Sometime in the '50s when I started buying Armstrong tires. I am not positive.

Q. Then from that period on you did stock Armstrong tires and bought some US tires from Burke-Savage?

A. That is correct.

Q. Is that correct?

A. That is correct.

Q. And then sometime after the change-over by 2411 Atlantic to sponsorship of Firestone TBA you changed over completely to Firestone—you stocked Firestone tires, right?

A. I stocked them but I didn't change over completely.

Q. What else did you stock?

A. I don't have any one line specifically in nothing except gasoline and oil.

Q. But on your tires did you discontinue the purchase of Armstrong and US?

A. That is right.

Q. And begin the purchase of Firestone?

A. I purchased more Firestone, that is right.

Q. And prior to that time you handled Exide and Bowers batteries and after the switch-over you eventually changed over to stocking Firestone batteries; is that correct?

A. That is correct.

Q. Now with respect to accessories, you also began to purchase some accessories from Firestone; is that correct?

A. That is correct.

Q. Who do you purchase your Firestone TBA from?

A. How do you mean that?

Q. Which store do you purchase it from?

A. 21st and Howard.

Q. Is that a Firestone service store?

A. I guess that is the warehouse. I think they have several in town. In fact, I know they do.

2412 Q. Do you know whether that is your designated supply point?

A. Yes. That is where they delivered to for our section. Or rather, where they deliver from, for our section. It is close.

Q. And prior to this switch-over you purchased Lee tires from Charlie Johnson; is that correct?

A. Yes.

Q. And you also purchased Mansfield tires from R. J. Loock; is that correct?

A. Yes.

Q. And that has also been discontinued, apparently?

A. Yes.

Q. You stated that the reason you changed to Firestone tires was because through Atlantic you could get a better price on Firestone tires?

A. That is right.

Q. Did you ever check Firestone's price schedule with the US price schedule, or with the Goodyear price schedule, or other price schedules?

A. At the time we started buying Firestone I did.

Q. And isn't—

A. Now they are pretty close to the same thing again.

Q. Isn't it a fact that there is little if any difference between the prices of the major brands? Isn't that correct?

A. That is correct.

2413 Q. And isn't it also a fact that the Lee tire is cheaper than the major brands, and that the Mansfield tire is cheaper than the major brands?

A. And they are a cheaper tire in quality. That is right.

Q. They are cheaper tires, but your discount margin is longer, is it not?

A. I don't know. I don't think Lee is.

Mr. Ballard: Just a moment. Would you read back that colloquy? There was one word that he said that I don't know whether the reporter got it or not.

(The reporter read the record.)

By Mr. Kelaher:

Q. How do you know that they are cheaper in quality?

A. I think I am entitled to my opinion. My opinion is that they are.

Q. It is strictly a matter of your own opinion?

A. That is right.

Q. You have no basis other than your own opinion for that, I am sure.

Mr. Ballard: I move that last remark be stricken.

Hearing Examiner Kolb: Let it stay. Let's get moving.

By Mr. Kelaher:

Q. When you were purchasing Lee tires from Charlie Johnson, it was under the Atlantic setup, wasn't it?

2414 A. Yes.

Q. And even though they were cheaper in quality, you purchased Lee tires; is that correct? In your opinion.

A. Yes.

Q. Wasn't that because Atlantic sponsored them?

A. It could be, I guess.

Q. The answer is Yes, isn't it?

A. Yes.

Q. You stated that the reason you changed to Fire-

stone tires was because you could get a better discount. Isn't it true that Atlantic has nothing whatsoever to do with your price classification when you purchase Firestone tires?

A. As far as I know.

Q. As far as you know they have nothing to do with the price you receive. It is based on your purchase volume, isn't it?

A. That is right.

Q. You are either an AB dealer, a B dealer, or a C dealer, or your price is based on the Firestone price list, isn't it?

A. Right.

Q. So your statement that you changed because you could get a better price is not true; you stated—

A. But it is true, I have the bills to prove it.

Mr. Ballard: Let him answer.

The Witness: I have the bills at home to prove it.

2415 By Mr. Kelaher:

Q. Let me ask you: You stated that because of the Atlantic tie-in you could get a better price buying Firestone tires?

A. Yes.

Q. Now how—

Mr. Ballard: Let him answer.

Mr. Kelaher: Let me ask the question.

Mr. Ballard: The man is giving an answer. The reporter can't get it.

Mr. Kelaher: I am asking my questions.

The Witness: You asked how it is true or how is it possible?

By Mr. Kelaher:

Q. How is it possible?

A. When I was buying on my own, which I still do the

same thing with everything I buy, when I buy one tire from anybody, if I go to Goodyear and buy one tire, I can't buy it as cheap as I can buy Firestone tires.

Q. What price classification does Goodyear give you if you buy one tire?

A. I wouldn't know.

Q. Have you ever looked at the prices?

A. When I tried before I could never get them. When Firestone—when Atlantic started handling Firestone, evidently they gave all the stations a better price than 2416 individually.

Q. Have you ever seen the Firestone price list? Have you been shown one by your Atlantic salesman, or Firestone salesman?

A. I have them in the drawers of my desk.

Q. And isn't it a fact that your pricing classification is based on your purchase volume?

A. It might be. And I don't feel I buy the volume, in fact I know I don't buy the volume for the discount that I get.

Q. In other words, you are getting—

A. I get a discount of a better volume than I do.

Mr. Kelaher: Apparently we may be getting into another field here, Your Honor.

By Mr. Kelaher:

Q. You did testify that the price was coming around to the same as the others at this time; is that correct?

A. As far as I know. I don't check them any more. I have no reason to.

Q. You just buy Firestone tires?

A. Right.

Q. Period.

A. Period.

Q. What type of service station identification do you

have in your station? I am talking about window decals and outdoor signs.

2417 A. Sir?

Q. Do you have a window decal on your station?

A. No. No window.

Q. Do you have an outdoor sign advertising tires?

A. Not any more. It blew down.

Q. You had an outdoor sign. So you don't do any advertising at all?

A. No place to put it. We have no sidewalk. We can't even use a sidewalk sign.

Q. As I understand your direct testimony, you do recall your conversation with Eugene Savage, of Burke-Savage Tire Company, is that correct, in about 1954?

A. I recall talking to him. Not verbatim, though.

Q. How did you first learn that Mr. Savage had testified about your station in this proceeding?

A. I told you I don't know where I got it, but there is such a thing—you hear a lot of things and no one knows where.

Q. By the grapevine?

A. Right.

Q. Did an Atlantic salesman or personnel from Atlantic ever mention it to you?

A. It wouldn't have been the salesman. I don't see the Atlantic salesman too often.

Q. Who is your Atlantic salesman?

A. Walt McGee.

2418 Q. Could it have been one of the other Atlantic personnel?

A. I wouldn't know.

Q. You can't recall?

A. No.

Mr. Kelaher: No further questions.

Redirect Examination by Mr. Ballard.

Mr. Thompson: I think it has a bearing in this case. One of the things is economic dependence, inability to make a living. I offer to prove that this man has a new Cadillac convertible. I think it has a bearing on the case.

Hearing Examiner Kolb: He is also in another business.

By Mr. Ballard:

Q. Mr. Leonard, do you buy only one brand of tires?

A. No. You can look in my stock right now and you will find at least four or five different brands. They are always in there.

Mr. Ballard: Thank you.

Mr. Mason: May I move to strike the testimony of the last two witnesses as to Goodyear?

Mr. Kelaher: I have a question on recross.

2419 *Recross Examination by Mr. Kelaher.*

Q. You did testify that you do stock Firestone?

A. Yes. I stock all kinds.

Hearing Examiner Kolb: The motion of counsel for Goodyear to strike the testimony so far as it pertains to Goodyear will be sustained. The testimony will remain in the record as to Atlantic.

Thank you, Mr. Leonard.

(Witness excused.)

Hearing Examiner Kolb: We will adjourn until 2:30.

(Thereupon, at 1:25 p. m., the hearing was adjourned, to reconvene at 2:30 p. m., this day.)

2:30 p. m.

Hearing Examiner Kolb: On the record.

Mr. Thompson: I wish to call as a witness Mr. Gabriel Tydings.

Whereupon GABRIEL TYDINGS was called as a witness for the respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

Q. Mr. Tydings, in this investigation I represent the Atlantic Refining Company. Immediately on your right is Mr. Kolb who is the Hearing Examiner and presiding officer in the case. The extremely youthful, coal-black headed man on your left is Mr. Kelaher, who is my opponent, and represents the Federal Trade Commission.

Mr. Tydings, what is your present occupation?

A. I am a milkman salesman.

Q. Did you start on that job early this morning?

A. I sure did.

Q. How early?

A. One o'clock I started serving milk.

Q. Have you had any sleep since?

A. No, sir.

Q. Were you at one time a lessee operator of a service station owned by the Atlantic Refining Company?

A. Yes, sir.

Q. Did you have a station at Clifton and Dennison Streets?

A. Yes, sir.

Q. Do you recall about when you first took that station?

A. '51 I think it was.

Q. And kept it until about July, 1953?

A. '53.

Q. That was a station, was it not, which had been previously operated by Joe Wyniger?

A. Yes, sir.

Q. And he left it to become a partner of Mr. Varnadore?

A. I think he went in the real estate business first, didn't he?

Q. He eventually became a partner of Mr. Varnadore?

A. Yes.

Q. Then from July to December, 1953, were you working at a Sinclair station?

A. That is correct.

Q. And then at the end of 1953 did you come back to an Atlantic station with Mr. Wells?

A. Yes, sir.

Mr. Kelaher: When?

By Mr. Thompson:

Q. About December, 1953?

2422 A. December, 1953.

Q. And you kept that station in partnership with Mr. Wells until about November, 1955?

A. That's right.

Q. Since that time you have been with the Cloverdale—

A. Cloverdale Dairy?

Q. When you took over the station at Clifton and Dennison from Mr. Wyniger in January, 1951, what kind of TBA did you have?

A. Lee tires and batteries.

Q. Was that stock which you purchased from Wyniger?

A. Yes, sir.

Q. When you say "Lee", do you mean Lee tires?

A. Lee tires, Lee batteries.

Q. Do you recall the time in the spring of 1951 when Atlantic Refining shifted from Lee and Exide to the Firestone line of TBA?

A. Yes, sir.

Q. I hand you, sir, three letters identified in this record as CX-150, CX-206, CX-207, and ask you with respect to each whether you recall, as an Atlantic lessee dealer, having received the letters.

The first I show you is CX-150, which is a copy of a letter from Dwight Colley, Vice President of Atlantic Refining Company, dated March 1, 1951, and entitled: 2323 "A statement of Atlantic's TBA Policy".

Would you be kind enough to look at that letter and tell me whether or not you recall receiving it.

A. Yes, sir.

Q. The second letter I show you is identified as CX-206, and that is a letter dated August 28, 1952, addressed by Mr. Colley to the dealers and entitled, "A Restatement of Atlantic's TBA Policy."

I hand you that letter and ask you whether you recall, also, receiving that?

A. Yes, sir.

Q. And the third letter I want to show you is identified as CX-207, dated June 24, 1955, addressed to Atlantic dealers and entitled, "No Forcing."

This particular one, sir, happens to be signed by J. D. Estlow. If you had received one I think it would have been signed by Mr. Gordon Burns.

A. That's right.

Q. Do you recall receiving that letter shortly before you left the station?

A. Yes, sir.

Q. Mr. Tydings, do you recall any dealer meetings held

in Baltimore in 1951 and 1952, at which time the 2424 Firestone-Atlantic TBA program was explained?

A. Yes, sir.

Q. Was it or was it not made clear to you at that time that you could take it or leave it?

A. I could take it or leave it.

Q. Was it made clear that so far as the dealers were concerned the program was voluntary?

A. Yes, sir.

Q. Since the change-over from the Lee-Exide line to the promotion by Atlantic of the Firestone line, what brands of tires have you carried at your station during the time that you and Mr. Wells were there?

A. Just about all kinds: Lee, Firestone, Goodyear, Vanderbilt.

Q. Referring, sir, to Vanderbilt, were they purchased from Joe Scheiner of the S & S Tire Company?

A. Yes, sir.

Q. Have you known Joe Scheiner for a lot of years?

A. Just for the amount of years that I was in the service station.

Q. Did you also purchase recaps from S & S Tire through Joe Scheiner?

A. Yes, sir.

Q. Did you have any experience with Mr. Scheiner with respect to recaps which have a bearing upon 2425 your continuing to do business with him?

A. We got a bad lot of recaps from him; call him up and talk to him about it. He didn't want to make them good. In fact, he didn't make them all good. I had to stand part of the loss myself, so I just cut down buying from him at that time, and just bought what I had to have.

Q. Do you remember to what company you shifted when you dropped S & S Tire on recaps?

A. Ezrine.

Q. Is that E-z-r-i-n-e?

A. Yes.

Q. Do you recall another occasion when you purchased or ordered some Suburbanite tires from Mr. Scheiner of S & S Tire?

A. Yes, sir.

Q. Will you tell us about that incident?

A. That was when Mr. Wells and I went in there together. We ordered Suburbanites. We got them. We didn't notice them right away. We put them on people's cars. And they come back to us and complained, the tread was not the same bar. The bar was such smaller than the Suburbanite bar and the snow tire. It didn't last as long. They wore out real fast. And we called Mr. Scheiner on it. He came up and explained that it was a smaller bar. He had duplicated the Suburbanite tread, but it was a smaller bar on the tire.

Mr. Kelaher: Mr. Thompson, would you identify 2426 the Suburbanite tire a little more? Who the manufacturer is?

The Witness: Suburbanite tire is a snow tread, has a bar type on it.

Mr. Kelaher: Is that a brand of tire? Or type of tire or what?

The Witness: That is a Goodyear tread. That is a Goodyear recap snow tire, what they call a Suburbanite snow tire.

By Mr. Thompson:

Q. As a result of that incident did you indicate to Mr. Scheiner that you were not planning to continue to buy from him?

A. We told him exactly that if we couldn't have the Suburbanite we couldn't use his tires because people wouldn't take them, they were complaining about them.

Q. After Atlantic started to promote the Firestone line of batteries, what brand of batteries did you and Mr. Wells carry at this station?

A. Lee, Firestone, and if a customer come in and wanted an Exide, we went out and got it, or whatever kind they want we went out and got it for them.

Q. Were you at first dealing in Bowers batteries?

A. When I first took the station it was Bowers batteries in there. The first month I was in the station a lady bought a Bowers battery and said she only had it a 2427 month. She had the guarantee. I called Bowers about it and Bowers wouldn't do anything about it. So I just discontinued handling Bowers batteries and handled Lee's.

Q. How about the brands of accessories which you carried since 1951 at that station, Mr. Tydings?

A. We handled products from the Baltimore Supply, Monarch, B. J. Hunt, R. W. Looek, and R. W. Norris—J. R. Looek and R. W. Norris.

Q. Did you also buy from the Baltimore Auto Supply Company?

A. Baltimore Auto Supply, yes, sir.

Q. And until you had the instance to which you referred from S & S Tire—that is, Joe Scheiner?

A. We bought all along from them. We bought from Scheiner TBA, too. When we needed it in emergency and didn't have it in stock we would go down to Scheiner's and get it.

Q. You didn't mention Firestone as accessories. Did you ever buy any accessories from Firestone?

A. Oh, yes. We bought some from Firestone.

Q. Some?

A. Yes.

Q. Were all these brands of TBA to which you have referred openly displayed at your station?

A. Yes, sir.

Q. Did you have a Lee rack, by any chance, for tires?

A. Yes, sir—no, a Lee rack for batteries. We had 2428 our own racks for tires. We had Lee display cards in our tires sitting out front. And Firestone Displays.

Q. Did you, by any chance, have a Lee sign on your station?

A. Yes.

Q. Did you sell these non-Firestone brands of TBA on Atlantic credit cards?

A. Yes, sir.

Q. Did Atlantic ever criticize you for doing that?

A. No. We sold everything on the credit card a customer asked for.

Q. To the extent that you handled Firestone tires, what was your basic reason for handling Firestone tires?

A. Mostly customers.

Q. By that, do you mean that there was a customer demand for Firestone tires?

A. Some of them.

Q. Mr. Tydings, I want to read from the transcript of the evidence that has been given before in this case, a couple of things that Joe Scheiner said about you, and ask your comments.

Mr. Kelaher, at page 1984 of the testimony you will find a reference by Mr. Scheiner to Mr. Tydings.

Mr. Kelaher: Go right ahead.

By Mr. Thompson:

Q. Mr. Kelaher asked Mr. Scheiner: "During what period did you solicit tire and battery business from Mr. Tydings?"

2429 Mr. Scheiner answered: "Well, I guess it was during 1953 and 1954."

Then he said, at a little later point: "Yes, from time to

time I had conversations—he and I had conversations regarding TBA.”

At another point at about the same place Mr. Scheiner, in response to a question asked by Mr. Kelaher, said: “I did business with Tydings, I guess, for about four or five years.”

Then the question was, “Beginning when?”

And Mr. Scheiner said, “It could have been as early as 1951; in fact it was.”

Then Mr. Kelaher said, “What brand of tires and batteries were you handling during this period when you were soliciting tire and battery business from Mr. Tydings?”

And Mr. Scheiner said, “I had both Lee and Firestone tires, and Lee and Bowers batteries.”

Mr. Scheiner then testified to a conversation which he said that he had with you at your station at Clifton and Dennison Streets. At page 2005 of the testimony Mr. Scheiner identified this conversation as having occurred before the partnership went into effect, when Tydings was operating with his son, which would place it very likely in 1953.

I pause to ask you, sir, whether in 1953 you had one of your sons helping you at the station?

2430 A. That's right.

Q. At page 1985, in response to a question by Mr. Kelaher, Mr. Scheiner testified as follows: “He”, referring to you, Mr. Tydings, “said that he would no longer be able to buy merchandise from me;”—that is, from Mr. Scheiner —“that his Atlantic salesman was applying pressure; that he would have to stock merchandise from them only.”

I ask you, sir, whether you made any such statement to Joe Scheiner?

A. No such conversation went on.

Q. At another point in his testimony, at pages 2006 and 2007, in response to a question by Mr. Kelaher, Joe Scheiner

said: "I made regular calls on him"—referring to you, Mr. Tydings—"at least once a week, and during one of my regular calls I asked him about filling in what he had sold." That is, what you had sold.

✓ "He"—meaning you, Mr. Tydings—"said he wouldn't be able to do so, that his salesman had gotten after him about stocking."

I ask you these questions: Was Lou Miller your salesman?

A. Yes, sir.

Q. Did he ever get after you about stocking non-Firestone TBA?

A. No, sir. Mr. Miller only got after me about house cleaning.

2431 Mr. Kelaher: About what?

The Witness: House cleaning.

By Mr. Thompson:

Q. Did either Mr. Miller or anybody else from Atlantic criticize you for carrying non-Firestone TBA?

A. No, sir.

Q. Did any of them ever tell you to stop buying it?

A. No, sir.

Q. Did any of them ever tell you to get it out of your station?

A. No, indeed. No, sir.

Q. Did they ever suggest or ask you to hide it?

A. No, sir.

Q. Did you make your own decisions about what you were going to buy?

A. Yes, sir.

Q. Did you feel free to buy any kind of TBA you wanted to buy?

A. Yes, sir. When I was in there I did.

Q. And from any source you wanted to buy from?

A. Yes, sir.

Q. Have you a recollection of an investigator from the Federal Trade Commission coming to see you back about 1953?

A. Yes, sir.

Q. Did he ask you questions?

2432 A. Yes, sir.

Q. Do you remember what he asked you, or what you said in reply?

A. No, I can't exactly recall what I said, but he didn't like some things I said to him because he didn't tarry too long. He asked me about if we had to pay for signs, and I told him No, we had nothing to do with signs. He asked me about the decals, and I told him No, Atlantic Refining Company took care of all that stuff.

Q. Did he ask you whether Atlantic forced you or pressured you into buying Firestone TBA, do you recall?

A. I can't recall whether he asked me that or not. But he did ask me if I was buying strictly Firestone products.

Q. Were you requested or subpoenaed to be a witness for the Federal Trade Commission here in Baltimore last November?

A. No, sir.

Mr. Thompson: Mr. Tydings, those are all the questions that I have. It is entirely possible that my handsome friend, Mr. Kelaher, may have a couple of questions he would like to ask you.

In fact, I would be surprised if he didn't.

Excuse me, I have one other question.

By Mr. Thompson:

Q. You came here under a subpoena today?

A. Yes, sir.

2433 Mr. Thompson: Thank you.

Cross-Examination by Mr. Kelaher.

Q. Mr. Tydings, going back over your leases, I would like to get some dates a little straighter. You began your Atlantic service station operation in January, 1951?

A. Yes, sir.

Q. And at that time did you enter into a one-year lease, or a two-year lease, or three-year lease?

A. I believe it was an extenuation of lease. If I am correct on it, it was an extenuation of lease.

Q. Let's say the first lease you signed in January, 1951, do you remember if it was a year-to-year lease, a one-year lease?

A. I think it was a year extenuation; I think that is the way it was.

Q. Did you ever sign another lease?

A. No, not until I went back with Wells.

Q. That was in what month?

A. That was in December, 1953.

Q. First you operated by yourself?

A. That's right.

Q. From January, 1951 until about July, 1953? Right?

A. Right.

Q. Then you went back with Mr. Wells from December, 1953 to about November, 1955, is that correct?

A. Right.

2434 Q. Starting with January 1951, what TBA did you begin to handle at the beginning of January 1951?

A. Lee and Bowers.

Q. Lee tires?

A. Lee tires.

Q. And batteries?

A. Lee tires and batteries.

Q. And Bowers batteries?

A. Bowers batteries.

Q. From whom did you purchase the Lee tires?

A. Lee Tire and Rubber Company.

Q. At or about March 1951, Atlantic began to sponsor Firestone TBA; do you recall that?

A. Yes, sir.

Q. Before we get into that, you also stated that you purchased Vanderbilt tires from Mr. Scheiner?

A. That is right.

Mr. Kelaher: I would like the record to show at this time that in addition to the products named by counsel for respondent Atlantic as being carried by S&S Tire Company through Joe Scheiner, he also testified at transcript 1987, I believe, that he carried Lee tires, Vanderbilt tires, Lee and Bowers batteries, and Firestone tires.

By Mr. Kelaher:

Q. So that, as you stated, you did purchase Van-2435 derbilt tires from Mr. Scheiner?

A. Right.

Q. Did you purchase any other products from him?

A. Yes.

Q. What other brands did you purchase from him?

A. Lee.

Q. Lee tires?

A. Lee tires, Lee batteries, Firestone tires.

Q. Bowers batteries?

A. No. I quit handling Bowers batteries.

Q. When you did purchase Bowers batteries, who did you purchase them from?

A. Scheiner.

Q. When the change-over came in about March 1951, did you make any changes in your source of supply of tires, batteries, and accessories? I am referring now to the period when Atlantic began to sponsor Firestone TBA.

A. Yes, sir. I bought just about everybody else's.

Q. Did you begin to stock Firestone tires?

A. Some of them. I still stock Lee's.

Q. You still stock Lee's?

A. Yes, sir.

Q. Who did you purchase your Firestone tires from?

A. Scheiner, some of them from Scheiner, some of them from Firestone.

2436 Q. Do you recall the Firestone location where you purchased your Firestone tires from?

A. Edmondson Village.

Q. At that time was your price on Lee tires lower than your price on Firestone tires?

A. Just about the same.

Q. About the same?

A. Yes.

Q. With respect to batteries, what batteries did you carry after Atlantic began to sponsor Firestone TBA?

A. Lee and Firestone.

Q. Lee and Firestone?

A. Exide.

Q. And you stated on direct testimony that you had a Lee rack; is that correct?

A. Yes, sir.

Q. At the time of the change-over, you testified on direct examination in effect that you had nothing to do with the signs; is that correct?

A. That is right. Other than the display signs that the tire company gave us.

Q. With respect to your service station identification, so-called window decals, what service station identification did you have prior to the Atlantic change-over to Firestone TBA?

2437 A. We had no decals, I don't think, until Firestone, did we?

Q. No decals until Firestone?

A. I don't think there was any decals.

Q. How about an outdoor sign?

A. We had Lee outdoor signs.

Q. You had Lee outdoor signs?

A. Tire signs.

Q. After the change-over to Firestone TBA, did you request Firestone or Atlantic to identify your station with Firestone advertising?

A. No, sir.

Q. And was your station identified with Firestone advertising?

A. Yes.

Q. You made no request for this?

A. No, sir.

Q. And would you state how that came about? Your station was identified with Firestone window decals, is that correct?

A. Yes, sir.

Q. Who put them there?

A. Atlantic Refining Company, I guess.

Q. You guess? You were the lessee operator at the time, weren't you?

A. Yes, but I had nothing to do with the signs. I didn't pay for no signs.

2438 Q. You didn't ask them to put the signs there, did you?

A. No, sir.

Q. How about your outdoor sign? Did they put up a Firestone outdoor sign on your premises?

A. I don't remember whether it was an outside Firestone sign put up or not.

Q. After the change-over you stated that you continued to stock Lee tires; is that correct?

A. Yes, sir.

Q. And did you have Lee window decals in your station any place?

A. No.

Q. No Lee advertising?

A. Only the tire signs which you put inside the tires, and little signs you paste on the windows.

Q. And there was no Lee outdoor sign, was there?

A. No, sir, nothing. Not then.

Q. Was there before?

A. Yes.

Q. What happened to them?

A. Took it down.

Q. Atlantic took it down?

A. No, I took it down.

Q. You took it down before—

A. Took it down before we made any changes because it was in our way.

Q. Then was a Firestone sign put up?

A. No, sir.

Q. You are sure that you had no outdoor Firestone sign?

A. If it was, it wasn't on the ground. If they put it up, they put it on a pole.

Q. It would be on the premises, though, wouldn't it?

A. Yes.

Q. Then there was one put up, wasn't there?

A. Yes, I think so.

Q. I beg your pardon?

A. I think there was, one on the pole.

Q. And you didn't ask anybody to put it there, did you?

A. No.

Q. Could you have taken that sign down if you had wanted to?

A. I don't know. Never asked.

Q. You didn't know whether under the terms of your lease you could take it down or not?

A. No.

Q. I would like to ask you again about this Lee rack that you stated was given to you. Are you certain that that was not a Firestone tire rack?

A. No. The Lee rack was in there when I went in.

Q. Was that taken out and a Firestone rack put in?

A. No, sir. We kept that for a couple of years afterwards.

2440 Q. With respect to your conversations with Mr. Scheiner, you stated that you do recall Mr. Scheiner; is that correct?

A. I recall Mr. Scheiner, yes, sir.

Q. And in connection with the conversation you were questioned about on direct examination, Mr. Scheiner was asked, at transcript 2009, this question by Mr. Thompson: "Do you believe what Mr. Tydings said to you? Or did you think he was giving you the brush-off?"

The answer by Mr. Scheiner was, "I believed him."

So, apparently, he had quite a high regard for you.

A. He didn't know what I had for him.

Q. Do you recall during the course of Mr. Scheiner's calls on you—you did have conversations with him, I assume?

A. Oh, yes.

Q. And you have testified that you purchased all of the products which he said he sold you. In his direct testimony he testified at transcript 1987 that he sold you Lee tires, Vanderbilt tires, Lee and Bowers batteries, and a few Firestone tires. That is correct, isn't it?

A. That is right.

Q. And there did come a time, did there not, when your purchases from Mr. Scheiner or S&S Tire Company decreased; is that correct?

A. On the basis of bad tires that he sold us.

Q. You testified on direct with respect to Sub-2441 urbanite tires purchased from Mr. Scheiner. You also testified on direct that you were a partner with Mr. Wells at that time.

A. That is right.

Q. Mr. Scheiner states that his conversation with you was prior to the time that you became a partner with Mr. Wells. Do you recall any conversations with him when you operated the station by yourself?

A. There was no conversation with Mr. Scheiner when I operated by myself in regard to any compulsory or anything about Atlantic Refining Company that I had to do.

Q. Did you have any complaints with him then with respect to—

A. Let's make this whole thing clear about Mr. Scheiner. I bought from Mr. Scheiner on 30-day bases. I didn't pay my bill one month. And I sent down there to get stuff and he put me strictly on cash basis, and he would come up every week and collect some money. I got a little determined with him. The only time he called on me every week was when he came up to get some money on his, I think it was \$190. He would come up every week to get some of that money. That was most of his intentions for calling on me.

Q. So you don't look too kindly toward Mr. Scheiner, I take it?

A. Mr. Scheiner don't look too kindly toward me, I don't think, because I held him up on his money.

2442 Q. When did all this take place?

A. When I was in there by myself.

Q. When you were in there by yourself?

A. Yes, sir. Maybe that will let you understand a little more.

Q. I think it does.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all, Mr. Tydings. Thank you.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: Mr. Examiner, the next witness whom we planned to call was Mr. H. Lester Lewis, whose residence address is 103 Third Avenue, Brooklyn, Baltimore 25.

I have the subpoena which the Commission issued, and the return showing that it was served at Mr. Lewis' place of business by R. D. Thomas, who is one of the Atlantic Refining Company's salesmen here in Baltimore, on June 27th, which was last Friday.

Mr. Lewis did not appear in response to this subpoena which required him to be present in this room today 2443 at 3:00 o'clock P. M. During the intermission my associate, Mr. Francis Ballard, made an investigation and ascertained from Mr. Lewis' place of business that he left on his summer holiday on Thursday, June 26th, with his wife. So that it would appear from the circumstances that he is not in contempt of the Commission but simply has not been in town and has not received the subpoena.

Therefore, sir, I am unable to call him at this time.

As we have no further witnesses scheduled for today, and the hour is 25 minutes of four, I suggest that we adjourn until tomorrow morning.

Mr. Mason: May I make a motion to strike the testimony of the last witness—Mr. Tydings' testimony? His only testimony concerning Goodyear was some Suburbanite

tires, and he apparently didn't get Goodyear tires, so it has no connection.

Hearing Examiner Kolb: The testimony with respect to the witness Tydings will be stricken so far as Goodyear is concerned, but will remain in the record insofar as Atlantic is concerned.

2445 Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: If your Honor please, I call to the stand Mr. Herman Sartoff.

HERMAN SARTOFF was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

↑
Q. Mr. Sartoff, will you give the court reporter your address please?

A. Place of business?

Q. Both place of business and home address.

A. Atlantic service station, Monroe and Pratt Streets; and I live in Catonsville.

Q. I am Mr. Thompson and I represent the Atlantic Refining Company in this investigation. The gentleman on the left is Mr. Kolb, who is the presiding officer and Trial Examiner for the Federal Trade Commission. The gentleman on your left is Mr. Kelaher, who is the attorney for the Federal Trade Commission.

Mr. Sartoff, do you lease that station at Pratt and Monroe Streets in Baltimore?

2446 A. I do.

Q. About how long have you been an Atlantic lessee?

A. Between 28 and 29 years.

Q. That is to say, you have been at that station 28 or 29 years?

A. I have.

Q. For a while weren't you there in a salary capacity?

A. Yes, sir. Before the stations were leased.

Q. And the station has been leased to you, actually leased to you for about twenty years; am I not right?

A. Approximately 20-21 years.

Q. So that you have been an Atlantic lessee since 1937 or 1938?

A. About 29 years.

Q. Before you became a lessee, did you at one time drive a truck for Atlantic?

A. I did.

Q. So you are quite an old timer with the Atlantic Refining Company, are you not?

A. Yes, sir.

Q. You have a three-year lease at your station?

A. Yes, sir. Three years.

Q. And I guess this is the second three-year lease?

A. That is right.

Q. Mr. Sartoff, do you recall that about 1951 2447 Atlantic started to promote the Firestone TBA line?

A. I do.

Q. Before that, do you recall what brands of TBA you carried at your station?

A. Lee tires.

Q. How about batteries?

A. Lee or Exide.

Q. Do you remember from whom you bought your Lee products?

A. Oh, yes. Lee Tire and Rubber Company.

Q. Before 1951 did you also carry Berger tires?

A. Berger tires, yes, sir, Berger Tire Company. It

was more or less an obligation to him. I was enjoying all their business. And Martin's, across the street, I bought batteries from them on the same principle.

Q. Do you know a brand of tire called the Pennsylvania tire?

A. Yes, sir.

Q. Before 1951 did you handle Pennsylvania tires, too?

A. Some, through Berger Tire Company.

Q. Before 1951 were you purchasing from the Martin Auto Supply Company?

A. Oh, yes.

Q. Did that company handle Exide and Lee batteries?

A. Exide batteries.

Q. Exide batteries?

2448 A. Yes, sir.

Q. Did you purchase some Exide batteries from them?

A. Oh, yes. Very convenient; right across the street. Lee batteries I bought from the Lee Tire and Rubber Company.

Q. Do you recall any meetings or discussions at the time that Atlantic started to promote the Firestone line?

A. Oh, yes. I went to their meetings.

Q. Were you told that you had to buy Firestone there after, or anything like that?

A. Oh, no.

Q. Do you remember, generally speaking, what was said?

A. Generally speaking, they advertised their line and told us what a good product it was. But we wasn't under any compulsory to buy anything from the Firestone Company.

Q. Mr. Sartoff, I am going to show you three letters, the first of which has been identified in this proceeding with the symbol "CX-206", signed by D. T. Colley, dated Au-

gust 28, 1952, and is called a "Restatement of Atlantic's TBA policy", and was addressed to dealers.

Also, another document identified as CX-150, dated March 1, 1951, entitled "A statement of Atlantic's TBA policy", and on the letterhead of Mr. Colley, and addressed to dealers.

I ask you to look at those two letters and let me know whether you recall receiving either or both of them.

2449 A. Yes.

Q. You say Yes with respect to CX-150?

A. Yes, sir.

Q. How about the one designated CX-206?

A. Yes.

Q. Referring now to the time commencing in 1951 and subsequent years when Atlantic was promoting the Firestone line, what kind of tires did you handle at your station?

A. Mostly Lee tires.

Q. Also some Firestone?

A. Firestone. Occasionally a Firestone. But I had better service from Lee because they were in the neighborhood, and also from Berger Tire Company, which was right around the corner.

Q. What kind of tire did the Berger Tire Company sell at that time?

A. They handle the Pennsylvania tire.

Q. And you continued to buy the Pennsylvania tire after 1951?

A. That is true.

Q. Did you or did you not also handle tires sold by the Ezrine Company?

A. That is right.

Q. Turning to batteries, after 1951 what kind of batteries did you stock and sell?

2450 A. Mostly Exide.

Q. From whom did you buy the Exide battery?

A. From the Martin Company.

Q. That is Martin Auto Supply?

A. Martin Auto Supply.

Q. Did you for a while buy any batteries from Berger?

A. Very seldom. In the event some of the others were closed. But mostly from the Martin Company. They handle the Exide battery. And occasionally a Lee battery for the Lee tire man. And occasionally a Firestone man came around, if he had specials on, or anything like that, I would buy batteries from him. It didn't make any difference who I bought from.

Q. Did the Berger Tire Company go out of business?

A. Yes, sir. Just about a year ago. Less than a year.

Q. How about your recap business; did you deal with Berger on recaps?

A. Mostly with Berger.

Q. Until they went out of business?

A. Yes, sir, mostly with Berger.

Q. And then to what company did you shift?

A. Ezrine. These are all in the neighborhood, and I have enjoyed the business of both Ezrine and also from Berger.

Q. Turning to accessories, what kind of accessories have you been buying since 1951—from whom?

2451 A. All from Martin Auto Supply. When I say "all" I mean at least 90 percent.

Q. And occasionally some Firestone?

A. If the man came around, yes, sir. I always thought I wanted to give him a little order. You become friendly with him, you know, you talk with him, and you give him a little order. But mostly from Martin and Company. Very fortunate that they were across the street. I didn't have to have too much stock. I could go over and get whatever I wanted right from Martin's.

Q. Do you remember a few minutes ago I spoke to you outside of this room?

A. Yes, sir.

Q. You have some pencils in your pocket, haven't you?

A. Yes, sir (handing).

Q. Would you be kind enough to read into the record what type of pencil you carry in your pocket?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: What is the materiality of that?

Mr. Thompson: Advertisement for an independent jobber.

Mr. Kelaher: Your Honor, I am going to object to an offer of this type unless he can show the materiality and relevancy of the offer.

2452 Hearing Examiner Kolb: I will sustain the objection unless you can show the materiality.

Mr. Thompson: I simply offer to prove that one of the Atlantic lessee dealers advertises, by carrying in his pocket and using pencils which—

Hearing Examiner Kolb: Is this his own pencil?

Mr. Thompson: Yes. I just pulled them out of his pocket.

Hearing Examiner Kolb: Then I will overrule the objection.

By Mr. Thompson:

Q. You are carrying in your pocket two pencils, both of which advertise the Martin Auto Supply Company; is that correct?

A. Yes, sir.

Q. Mr. Sartoff, at your station do you have a Lee tire rack?

A. Lee tire rack? I have a couple of little stands, you know. I don't have a rack.

Q. With the Lee name on them?

A. Yes, sir. Individual tires; I don't have the rack.

Q. What kind of battery tester do you have in the station?

A. Just my own personal. No name on it at all. You said tester?

Q. Yes.

2453 A. Yes, sir. But I have a charger which is Lee-Exide. An Exide charger.

Q. Does it have the Exide name on it?

A. Yes, sir.

Q. And is used at the station?

A. Yes, sir.

Q. Going back to tires, are non-Firestone tires openly displayed at your station?

A. I don't have too many tires displayed at the station. I don't have too many tires. There is no particular name of tires displayed at all. I don't advertise Lee tires or Firestone tires or Goodrich. Just tires. I have a rack there with no specified name on them.

Q. Are whatever tires you have there open to inspection by anybody who comes to the station?

A. Oh, yes. Why sure.

Q. Perfectly visible to all comers?

A. Sure.

Q. Is that also true with respect to whatever batteries and accessories you have there?

A. That is right. It is right in the open.

Q. Do you do business on Atlantic credit cards?

A. Sure do.

Q. Do you sell any brand of tires or batteries or accessories you want on Atlantic credit cards?

2454 A. I do.

Q. Have you ever been criticized by Atlantic for so doing?

A. No, sir.

Q. Have you ever been criticized by Atlantic for carrying all these various brands of non-sponsored tires, batteries and accessories?

A. Never at any time.

Q. Has anybody from Atlantic ever told you to stop buying them?

A. Oh, no.

Q. To get them out of your station?

A. Never.

Q. Or to hide them?

A. Never.

Q. Has Atlantic ever tried to put any pressure upon you to buy Firestone?

A. No, sir.

Q. Have you always felt free to buy any kind of TBA you wanted to buy?

A. Always have.

Q. Always made your own decisions about what you buy?

A. Yes, sir.

Q. I show you another communication from the Atlantic Refining Company to dealers, identified as CX-207, dated June 24, 1955. This particular letter happens to be 2455 signed by the manager of the Philadelphia region. If you received one it would have been signed by Mr. Gordon Burns. Do you know who he is?

A. Yes, sir.

Q. I ask you to look at it and tell me if you recall receiving such a letter in the summer of 1955 (handing).

A. Yes, sir.

Q. Mr. Sartoff, have you had any difficulty in obtaining renewals of your lease from Atlantic Refining Company?

A. Never.

Q. When your lease has from time to time been renewed,

has there been any comment about the fact that you don't handle much Firestone TBA?

A. No, sir.

Q. Have you got a lot of competition in the area from other service stations?

A. There are a few. There is always some competition there. Within one block there is one service station; two blocks to the right there is three service stations; two blocks south there are two service stations.

Q. Have you from time to time received offers from competitors of the Atlantic Refining Company, to take stations that they own?

A. I have.

Q. Quite frequently?

2456 A. The last one was about two years ago.

Q. Are you happy in your relationship with Atlantic Refining Company?

A. I have been with them 29 years.

Q. Mr. Sartoff, as an old-time service station operator in this business, is it, in your opinion, helpful to the new and inexperienced dealers for Atlantic to have a TBA program with Firestone?

Mr. Kelaher: Objection, your Honor.

Mr. Thompson: I would think, sir, that this man would be qualified in view of his 28 years experience as a service station operator to express an opinion as an expert.

Hearing Examiner Kolb: Read the question, please.

(The reporter read the question.)

Mr. Kelaher: I object. I don't think he is in a position to express an opinion as to what is good for some other Atlantic dealer.

Hearing Examiner Kolb: I will let him answer. The objection will be overruled.

The Witness: I have been to practically every meeting that they have had, regardless of whether it was Atlantic

or Firestone, and I think all those meetings are beneficial. They are always helpful.

By Mr. Thompson:

Q. Are they helpful even to an old timer like yourself?

2457 A. Oh, yes. There are always new points brought out. They are always helpful.

Q. Mr. Sartoff, in 1953, more than five years ago, did a man call upon you who represented himself as an investigator of the Federal Trade Commission?

A. I have a faint recollection, but I don't recall the party, whoever it was, saying that he was an investigator.

Q. Or a representative of the Federal Trade Commission.

A. Probably, yes, sir. Probably a representative. But I don't recall him ever saying he was an investigator.

Q. Did he ask you some questions?

A. From my recollection it was out on the driveway that we were talking there, and I had an appointment there and I told the gentleman that, and I asked him to come back tomorrow, that I had an appointment. We spoke for a few minutes there. And a car drove up and I left in the car. We were on the outside.

Q. Do you recall whether you did or did not sign some kind of a statement that he handed you?

A. I don't recall, honestly. I may have, but I don't recall.

Q. While he was talking to you—

A. He came inside and then we walked on the outside because I was waiting for this car.

Q. While he was talking to you, was he writing things down on a piece of paper; do you remember?

A. No, I can't recall.

2458 Mr. Thompson: Mr. Sartoff, those are all the questions I have. It is possible that Mr. Kelaheer may want to ask you a couple of questions.

2459 *Cross-Examination by Mr. Kelaheer.*

Q. Would you recognize your signature if you saw it?

A. Oh, sure.

Q. I ask you to look at a document which I hand you and ask you if that is your signature?

Mr. Thompson: I think you should show it to counsel.

Mr. Kelaheer: I am asking if that is his signature. Obviously, I will show it to counsel.

A. That's right; the signature is right.

Mr. Kelaheer: Your Honor, the document which I have shown the witness is a document with this printed certification appearing thereon: "I certify that the information recorded above, and which I have read, was given by me in response to the questions of the attorney-examiner, Federal Trade Commission, whose name appears below, and said information is, to the best of my knowledge, factual and correct." Signed "Herman Sartoff, March 17, 1953." And also signed, "Henry Lipsky"—L-i-p-s-k-y—"Attorney-Examiner, Federal Trade Commission."

By Mr. Kelaheer:

Q. Mr. Sartoff, does that refresh your recollection with respect to an interview by a Federal Trade Commission representative?

A. Only on the driveway. Just for a few minutes.

2460 Q. And you do remember signing this document?

A. That is my signature. I can't recall, but that is my signature, it is true. It is my signature.

Mr. Thompson: Mr. Sartoff, you are permitted to read the entire document and see if that is the document you signed.

Mr. Kelaher: Yes, I was going to give him that opportunity.

(The document was handed to the witness.)

The Witness: It just says here—

By Mr. Kelaher:

Q. Just a minute. Just read it and I will ask you some questions.

A. It doesn't say anything on here. It just says I don't handle—

Q. Don't bothering answering anything until I ask you. You have read the statement now?

A. Yes. I don't see nothing on there—

Mr. Thompson: Has that statement been identified for the record, Mr. Kelaher? If it hasn't, it should be.

Mr. Kelaher: I don't know whether an identification is necessary, other than—

Hearing Examiner Kolb: Are you going to offer it in evidence?

2461 Mr. Kelaher: I don't intend to at this time.

Hearing Examiner Kolb: Do you still want it identified?

Mr. Thompson: I think, sir, if he is trying to use some kind of document either for the purpose of refreshing the witness' recollection, or—

Hearing Examiner Kolb: All documents used for refreshing a witness' recollection are not necessarily going in evidence, or identified.

Mr. Thompson: Not necessarily but it is entirely possible that I might want to offer this document in evidence.

Hearing Examiner Kolb: You can do that at that time.

By Mr. Kelaher:

Q. Mr. Sartoff, on direct examination you stated that you have been an Atlantic lessee dealer for 20 or 21 years, is that correct?

A. Approximately.

Q. On your written statement it places you—it states: “Lessee station until nine years ago, location was company-owned and operated.” The statement was made in 1953.

So that would mean that you became a lessee dealer about 1944.

Mr. Thompson: I object to the form of the question. It doesn't mean any such thing. It may well have been that some investigator from the Federal Trade Commission 2462 mission wrote that on a piece of paper.

I think Mr. Kelaher's proper question is to ask Mr. Sartoff whether that is or isn't a statement which he made.

Mr. Kelaher: I think we have established that he has read the statement, and that he has subscribed to them.

Mr. Freed: All you have done is establish that there is a certain printed boiler plate at the bottom of that document.

Mr. Kelaher: I didn't understand that remark.

Mr. Freed: All you have done is established that there is certain printed boiler plate at the bottom of the document, above the witness' signature.

Mr. Kelaher: It states in the printed boiler plate that he read the document.

Mr. Thompson: Why don't you ask him whether he read it. That is one way of finding out.

Mr. Kelaher: I would like to carry on my cross-examination here, if I can.

Hearing Examiner Kolb: Go ahead.

By Mr. Kelaher:

Q. On your direct testimony you stated that you have been a lessee dealer for approximately 20 or 21 years, and on your signed statement the fact is established that you have been only a lessee dealer for about 15 years.

Mr. Thompson: I object to the assertion that the 2463 fact is established. That fact has not been established.

By Mr. Kelaher:

Q. What would account for that difference?

Mr. Thompson: I object to the question.

Hearing Examiner Kolb: Mr. Kelaher, we are not going to fight over five years 15 years ago, are we?

Mr. Kelaher: I want to determine—

Hearing Examiner Kolb: A man can almost miss that in making a statement.

By Mr. Kelaher:

Q. Is it possible you were mistaken on your direct examination?

A. I don't know. The only thing I know, I have been with the Company about 28 years.

Q. Right—

A. I do know that. And I know for about 6 or 7 years it was all-company operation. It might be 8 years. I can't pin-point it down to any particular year.

Q. But there is a possibility that you have been a lessee since—

A. It has been over 15 years. That is for sure.

Q. Right now it is slightly over 15 years?

A. A whole lot over 15 years.

Q. On direct examination you stated that prior to Atlantic sponsorship of Firestone TBA you carried 2464 Lee tires, is that correct?

A. That's right.

Q. After Atlantic began to sponsor Firestone TBA you stated on direct examination that you began to carry some Firestone, but you minimized the importance of it, is that correct?

A. No, I didn't—I don't recall saying I minimized the

importance of it. I handled the Lee tires and whenever the Firestone salesman came around if I felt like giving him an order I gave him an order.

Q. I call your attention to the signed statement which says that you stocked Firestone and Lee tires?

A. Some. When I stock, it could be two tires. Firestone and Lee. "Sells all tires."

Q. But you did stock Firestone?

A. Some. Two tires, probably.

Q. You don't call carrying one or two tires "stocking"?

A. I only carry an eight- or ten-tire stock there. A couple of Lee's. I have to carry a couple.

Q. So you stocked as many Firestone as you did Lee then, in other words?

A. Not necessarily. I favored Lee. I always favored Lee.

Q. You always favored Lee. But the point is, after March, 1951, you did begin to stock Firestone tires, is that correct?

A. And probably before, too.

Q. And you didn't mention on your direct testimony 2465 money that you stocked them before March, 1951?

A. Probably I was never asked.

Q. Did you stock them before March, 1951?

A. I can't recall. I can't pin-point myself down.

Q. But you do know that you began to carry them afterwards?

Mr. Thompson: Let the witness finish his answer.

A. No. I always handled whatever I wanted.

By Mr. Kelaher:

Q. You also stated that after 1951 you carried mostly Exide, purchased from Martin Auto Supply Company?

A. That is true.

Q. Your signed statement, as of March 7, 1953, under "Batteries", doesn't even mention Exide.

Mr. Thompson: Hold it a minute. I am going to object to this line of questioning for this very good reason, sir: Mr. Kelaher, referring to a document which is not in evidence, is purporting to quote. If he wants to put it in evidence he can put it in evidence and then read from it. But just a stray document which is sitting in his lap he has no right to read from and say, "You said this in 1953"

Why don't you identify it? Why don't you put it in evidence?

Mr. Kelaher: I don't think it is necessary that I do.

Mr. Thompson: I object to this line of questioning.
2466 Hearing Examiner Kolb: I think under the method you are using you will have to put it in evidence.

The Witness: If it will help you I had an Exide charge account for 15 years.

Mr. Kelaher: Wait until we get a ruling on this.

Hearing Examiner Kolb: I will sustain the objection.

Mr. Kelaher: I will ask that this document be marked for identification as the next Commission exhibit.

The Witness: Does it say "Bowers Batteries" on there, too?

Mr. Kelaher: I think your Honor should instruct the witness just to answer questions as they are asked.

I know you are trying to be helpful.

Hearing Examiner Kolb: That will be Commission Exhibit 480.

(The document referred to was marked Commission's Exhibit 480, for identification.)

Hearing Examiner Kolb: Any objections?

Mr. Thompson: No, sir.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 480.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 480, was received in evidence.)

2467 Mr. Kelaher: Now may we proceed?
Hearing Examiner Kolb: Proceed.

By Mr. Kelaher:

Q. You stated on direct examination that you purchased mostly Exide batteries since March, 1951—since Atlantic began to sponsor the Firestone TBA program. Is that correct? Is that what you stated on direct examination in answer to a question by Mr. Thompson?

A. I have handled Exide batteries for quite a number of years.

Q. On your signed statement I will read three TBA brands, suppliers, and prices. Under subheading "B": "Batteries: Bowers—few. Also buys Lee from Lee distributor."

On March 17, 1953, you didn't have an Exide battery in your station apparently?

A. I ~~have~~ always had one. Let me explain something to you for example. Every once in a while these fellows come out with a deal, they are just starting their batteries. Lee came out just about a month ago. They have had a few off-numbers that they are discarding and they are cutting the price on them. So I just bought three Lee batteries, just because the price has been cut and they are discarding that number.

Q. That is fine. But let's get back to March—

A. And the same with Exide and the same way with Bowers.

2469 Q. These are supposed to represent the battery brands and your suppliers on that date.

Mr. Thompson: I object.

Hearing Examiner Kolb: Did he mention Berger as a supplier?

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: Of batteries?

Mr. Thompson: Yes, sir.

Mr. Kelahe: There is no Berger mention.

The Witness: Bowers.

Mr. Thompson: I object to Mr. Kelahe saying this is supposed to be something or other. That was the form of the question. If the question is still pending I would like a ruling on it. I would like it re-read and have a ruling on it.

Mr. Kelahe: Mr. Examiner, I am going to make this observation. Whenever Mr. Thompson during our case-in-chief entered on cross-examination and I objected, he raised the roof because he said he had great latitude on cross-examination. And I think this is strictly harassing and diversionary tactics and I am going to strenuously object to it. I am entitled to wide latitude on cross-examination, too.

Hearing Examiner Kolb: I don't think Mr. Kelahe made quite the approach somebody else would make. We will let him go ahead.

2470 The Witness: Mr. Kelahe, I will tell you one thing—

By Mr. Kelahe:

Q. Just answer the questions.

Mr. Thompson: Why don't we have a question and see whether it is objectionable.

By Mr. Kelahe:

Q. On direct examination you testified that you purchased 90 percent of your accessories from Martin Supply Company, is that correct?

A. That is true.

Q. Do you sell many accessories?

A. Very little.

Q. Very little. That is true?

A. That's right. Very little.

Q. I am happy to say that that is supported by your written statement.

A. Very little.

Q. Which under "C, Accessories" states "Very small line of accessories"?

A. True.

Q. Where is your station located?

A. Monroe and Pratt Streets.

Q. Is that in a commercial area?

A. I would say no. Just a few stores, two blocks. But outside of that there isn't.

2471 Q. Is most of your trade, transit trade?

A. I would say it was on a 50/50 basis some time ago. Of course, now that has dropped off and we do more neighborhood business.

Transit trade dropped off due to the harbor tunnel.

Q. Prior to that time it was a transit station?

A. It was transit.

Q. And as a matter of fact your sales of TBA have been low for some time, have they not? Is that correct?

A. Always about the same TBA.

Q. And that has been fairly low, is that correct?

A. They work out an average.

Q. You say that you are presently under a three-year lease, as I understand. Do you recall when that lease was executed?

A. About a year or so ago.

Q. I am going to show you Commission's Exhibit 88-A-1 and -A-2, which is entitled "Dealer Lease", with an appended Schedule A identified as Commission's Exhibit 88-A-3, and an appended document which has been designated as 11-point lease letter in the record, as Commission's Exhibit 88-B, and ask you if they are the document which you executed at the time you signed your last lease? (Handing.)

Mr. Thompson: Mr. Kelaher, may we establish, to clarify the record, when the last lease was signed?

Mr. Kelaher: He said a year ago, he thought.

2472 The Witness: Approximately.

Do you want me to go over this?

By Mr. Kelaher:

Q. No. I just want to ask you if this is the lease you executed. 88-3-A, for example, there is a scale showing the percentage of lessee's gross sales which is used in estimating the rent. Do you have that in your lease?

A. No, sir.

Mr. Thompson: Mr. Examiner, if it is pertinent, I would be delighted to find out precisely what kind of a lease this gentleman has and stipulate it with Mr. Kelaher.

Mr. Kelaher: It is my impression that counsel for Atlantic stipulated that if Atlantic officials were called they would testify that the lease that was executed was determined by the date. For example, this one on the printed form has July, 1956 as the date. So that if he entered into a lease in 1957, I assume that he would be entered into this type lease.

Hearing Examiner Kolb: Why don't you stand on the stipulation and not ask specific questions?

Mr. Kelaher: I want to establish whether or not he is operating under this particular form.

The Witness: No, sir.

Mr. Kelaher: No further questions.

2473 *Redirect Examination by Mr. Thompson.*

Q. Mr. Sartoff, referring to your signed statement of March 17, 1953, which has been offered in evidence as the Government's Exhibit DX-480, was a copy of that statement left with you by the Federal Trade Commission man who wrote the information on it?

A. I don't have a copy.

Q. Has this document ever been in your possession?

A. No, sir.

Q. Did the Federal Trade Commission man take it with him after you had signed it?

A. Oh, yes.

Mr. Thompson: Thank you.

Hearing Examiner Kolb: Is that all?

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: That is all, Mr. Sartoff.

(Witness excused.)

We will take a short recess.

(A short recess was taken.)

2474 Hearing Examiner Kolb: The hearing will come to order.

ALBERT J. SOUKUP was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Hearing Examiner Kolb: Will you give your name and address to the reporter.

The Witness: Mr. Albert J. Soukup.

Direct Examination by Mr. Ballard.

Q. Would you give the reporter your address, also?

A. Station?

Q. Yes.

A. 501 Washington Boulevard.

Q. And your home address?

A. 4114 Moravia Avenue, Baltimore 6.

Q. Mr. Soukup, the gentleman on your right is Mr. Kolb, the presiding Examiner at this hearing. The gen-

tleman on your left is Mr. Kelaher; he represents the Federal Trade Commission.

Mr. Soukup, how long have you been at your present station, Atlantic station?

A. I had a partner at that time, in 1936.

Q. You took it over in 1936 with a partner?

2475 A. With him, yes. That is right. He left and I bought him out in 1944, March, I think, 1944.

Q. And have you operated it yourself?

A. Operated it myself ever since.

Q. Do you recall, Mr. Soukup, a number of years ago, in March 1951 to be exact, Atlantic changed over from selling Lee tires and Exide batteries to sponsoring Firestone TBA? Do you recall that?

A. I remember. I remember they changed over. The exact date I don't recall.

Q. Would you tell us what tires you were selling before that change-over?

A. Mostly Lee tires and we would pick up some other tires, US Royals; occasionally a customer would ask for them. We went down to Plotkin's and he had Shenuits down there, I think, and we would pick up Shenuits down there. Different brands.

Q. Did you handle any Firestone tires at that time?

A. To any extent, no, I couldn't say whether I had any of those or had any calls for those. If I did it was very seldom.

Q. When Atlantic began to promote the Firestone line, did you make any change in your tire buying?

A. No. I kept on handling mostly Lee tires, practically all Lee tires. And Firestone.

2476 Q. Where did you get your Lee tires?

A. Direct, right from the branch. Previous to the handling of Firestone?

Q. Previous to the handling, where did you get them?

A. Charles Johnson—Charlie Johnson.

Q. And after the handling of Firestone? After Atlantic moved to Firestone?

A. I bought them from the Lee distributors. In other words, the factory branch on Franklinton Road. I still buy there.

Q. What brands of batteries do you handle?

A. Previous or at the present time?

Q. At the present time.

A. At the present time?

Q. Yes.

A. Mostly Lee batteries.

Q. How long have you been handling them, primarily?

A. Lee's?

Q. Yes.

A. Since they came out. Since they made batteries. I don't know about when Lee started making batteries. I don't know if it is four, five, or seven years ago Lee started making batteries and I have been handling them ever since.

Q. What did you handle before Lee?

A. Occasionally we would go across the street, a little supply place over there, and they had Willard's in 2477 there and Delco. When we needed one we would go over there and pick one up.

Q. Did you ever handle the Bowers battery?

A. Bowers battery, yes, I handled that almost one hundred percent.

Q. Speaking of accessories—by “accessories” I don't mean repair parts, I mean lighter accessories—where do you get your accessories for your station?

A. At the present time?

Q. Yes.

A. From Baltimore Gas Light, and Service Parts, Firestone.

Q. Do you also deal with Norris—R. W. Norris?

A. Yes. We occasionally pick up something at Norris. Lately we haven't been buying too much from Norris.

Q. And J. R. Hunt?

A. Not at the present time. I haven't been buying anything from them.

Q. Did you use to buy from them?

A. Yes, from J. R. Hunt.

Q. These tires, batteries, and accessories that you have been talking about, are they displayed in your station?

A. Yes. They are displayed up on shelves, and the tires are racked up in the back room, about ten or fifteen tires, whatever I have in stock. Usually I carry about ten tires in stock.

2478 Q. Out of that ten tires, how many would probably be Lee tires?

A. You mean at present?

Q. Yes.

A. I don't have any Lee's up there at present. About two Lee's.

Q. Two Lee's?

A. That is right. I usually call them. They deliver pretty fast. I don't have to carry a stock of them.

Q. And your batteries, are they displayed there, too?

A. Yes, they are displayed in the showcase.

Q. Are they visible to the Atlantic salesmen when they come in?

A. He can see them, yes.

Q. Has he ever criticized you for carrying those?

A. He never said a thing about it.

Q. Has anyone at Atlantic ever tried to stop you from buying Lee tires, Bowers batteries?

A. No, they haven't because I haven't heard anyone say anything to me about it as yet.

Q. Do you feel free to buy your tires, batteries, and accessories from any source you want?

A. I always have, yes.

Q. Mr. Soukup, in the course of your stay at your station, your lease has been renewed many times, hasn't it?

2479 A. That is right.

Q. On the occasion of those renewals, has Atlantic ever criticized you for not handling Firestone TBA?

A. No, they never said anything to me, just told me my lease was up and a new one was being written. That was all that was said.

Q. Do you recall an occasion some years ago when a man from the Federal Trade Commission interviewed you about TBA matters?

A. I recall him coming there, but the date I wouldn't know. I had a conversation with him. What date I wouldn't know.

Q. Did you have any idea how many years ago it might have been?

A. It could have been five, six years, anything. I couldn't tell the date.

Q. How was that interview conducted, to the best of your recollection?

A. He came in and showed his credentials. I was standing in the office there. He showed his credentials and told me it was Federal Trade and started asking me some questions about stock and different things. And I explained to him, as best I could, and he asked me about different things and I said, "You can look around and see what I've got."

Q. Did he make notes of what you told him?

2480 A. I think he was making notes, yes.

Q. Do you recall whether you signed those notes after he had made them?

A. It has been quite a while ago, as I say. I do think I signed something, I am sure.

Q. Do you have a copy of the statement he gave you—of the statement he took?

A. No. He didn't give me a copy.

Q. You have never seen it?

A. Never.

Q. Since you have signed it?

A. That's right.

Q. Mr. Soukup, as we took notes of what you said in regard to the tires that you are handling today, it says "practically all Lee tires and Firestone." My question to you is, is it practically all Lee tires, or practically all Lee and Firestone?

A. Do you mean at the present time what I have been selling?

Q. Since 1951.

A. Since 1951? It was mostly Lee tires. Mostly all Lee tires.

Mr. Ballard: I don't think I have any more questions. Mr. Kelaher will probably have some questions of you.

2481 *Cross-Examination by Mr. Kelaher.*

Q. Prior to Atlantic change-over to Firestone TBA, which took place in about March 1951, you testified that you purchased Lee tires from Charlie Johnson; is that correct?

A. I am sure Charlie Johnson was handling them at that time.

Q. Wasn't that part of the Atlantic setup at that time?

A. I think it was, yes.

Q. You stated that you made some purchases of US Royal at that time. Who did you buy those tires from?

A. I think I bought those from Fisk or US Royal, the

same thing. I had to call for a pair, a set of them, from Paul Schnitzer out on Hillen Street.

Q. And at that time you testified you very seldom purchased Firestone tires; is that correct?

A. That is right.

Q. After the change-over in March 1951, you discontinued purchasing from Mr. Johnson—Lee tires from Mr. Johnson; is that correct? You testified that you purchased from the Lee factory branch.

A. Well, I think that when he gave it up I bought them from the Lee factory branch; that is right.

Q. It was at that time that you changed over?

A. That is right.

Q. Where do you buy your Firestone tires from?

2482 A. From the Firestone people. Do you mean at the present time?

Q. Yes. The Firestone store?

A. Yes, the Firestone store.

Q. I wasn't too clear on one answer you gave. What tires do you have in stock at the present time?

A. At the present time?

Q. Yes.

A. I have Firestone and Lee up there. Firestone and Lee.

Q. Firestone and Lee?

A. That is right.

Q. And on direct you testified that you had two Lee tires in stock at the present time?

A. That is right.

Q. And the rest of them are Firestone?

A. That is right. It is about five Firestone up there. Very seldom I carry a large stock because when I call Lee they deliver right away. In half an hour they will have a tire down.

Q. So I take it your purchases of Firestone tires in-

creased after Atlantic changed over to Firestone TBA setup?

A. Previous to Atlantic handling Firestone, I didn't have any calls for Firestone tires.

Q. After they began to handle it you began to increase your purchases of Firestone tires; is that correct?

2483 A. Well, I handled more than I did before, yes. But the majority of the tires I handled were Lee's.

Q. But you did increase your purchases of Firestone?

A. Yes.

2484 Q. You also testified that you have been handling Lee since they began to manufacture them. Is that correct?

A. Batteries?

Q. The batteries.

A. That's right.

Q. How long ago was that?

A. Off-hand, I don't know when Lee started making the batteries.

Q. Approximately. How long have you been buying them, approximately?

A. From Lee, batteries?

Q. Lee batteries.

A. I would say 5 to 7 years.

Q. And you also purchased Firestone batteries?

A. I wouldn't say over two a year. One or two a year. When I had a call for that I would purchase Firestone.

Q. At one time you testified on direct that you purchased some accessories or purchased accessories from J. R. Hunt.

A. That is quite a few years back; yes, sir.

Q. Do you recall the accessories you purchased from him? Did you purchase batteries from him?

A. No. I don't remember. I think he was handling Exide batteries. If I got a call I would pick a battery up. But it was very seldom.

Q. That was part of the Atlantic set-up at that 2485 time, too, I believe.

A. I don't recall that, whether it was or not, sir. Of course, Hunt charged me for whatever it was. In other words, I received a bill from Hunt.

Q. Do you have an outdoor sign in your station advertising any of your TBA products?

A. Outside?

Q. Outside. Outdoor sign?

A. Yes, I think there is one there, yes.

Q. You think there is?

A. Well, the last I saw it, it was still hanging there.

Q. That was this morning?

A. That's right. I knew it was there.

Q. What sign is that?

A. Firestone.

Q. Did you ask Atlantic or Firestone to put that sign up there for you?

A. I don't recollect whether I did or not, sir.

Q. Don't you recall whether you asked them to put a sign up in your station?

A. I don't know, because that sign has been there quite a while. I wouldn't know at the present time whether they put it up—

Q. When was the sign put up?

A. I don't know when it was put up, what date. I 2486 wouldn't know when. It is down at the end of the property on a pole down there. When it was put up, I wouldn't know.

Q. Was it put up after Atlantic began to sponsor Firestone TBA?

A. I am sure of that, yes.

Q. You are sure of that?

A. Yes.

Q. As I understand your answer, you did not request Firestone or Atlantic to put the sign up?

A. I don't remember whether I asked them to put the sign up; no, sir. If they asked me whether I wanted the sign or asked them to put it up I don't know.

Q. Do you sell TBA on credit cards?

A. That's right, yes.

Q. And have you ever sold Lee tires on credit cards?

A. Yes, sir.

Q. And when you report that type of sale to Atlantic, what brand do you mark down?

A. When we first started we used to put in there Firestone.

Q. Even though you were selling Lee tires you would mark it Firestone?

A. Yes, sir.

Q. What was the reason for doing that?

A. The reason was that we felt that when we sold the Lee tire we would have the company feel that we were 2487 selling Firestone. I don't know whether they checked it or not. But have them feel that we were selling the product, the Firestone tire.

Q. So you were actually deceiving Atlantic at that time?

A. At that time, I imagine I was, sir.

Q. And I think you are very honest to admit it. And it is also true that you also marked other brands as Firestone in addition to Lee, at that time, isn't that correct? Batteries, for example?

A. At the beginning I am positive that I did, at the beginning. But I corrected that after a time. I didn't see any reason for doing it any more, regardless.

Q. Wasn't that because you knew that Atlantic expected you to handle Firestone TBA?

A. Well, I mean —

Q. Wasn't that your reason now for—

Hearing Examiner Kolb: Let the witness answer the question.

By Mr. Kelaher:

Q. Go ahead.

A. Would you repeat it?

(Question read.)

I don't know, "expected". I don't know how you can put that, sir, because I had everything else in there. You understand what I mean. I imagine they expected 2488 me to buy some Firestone products.

Q. And that was the reason you used the Firestone identification on your report of credit card sales?

A. I wanted Firestone to feel that I was selling something, yes.

Mr. Kelaher: That is all, your Honor.

Redirect Examination by Mr. Ballard.

Q. Mr. Soukup, when did you stop putting Firestone—identifying sales of Lee as Firestone? How many years ago?

A. As I say, on the date, I couldn't say when we stopped, you understand.

Q. Could you say how many years ago it might be?

A. I would say three or four years ago; yes, sir. We didn't sell that many that we had to do that, so it was discontinued.

Mr. Ballard: No further questions.

Mr. Kelaher: I have no further questions.

Hearing Examiner Kolb: That will be all.

(Witness excused.)

Mr. Kelaher: Mr. Examiner, as you will recall, yesterday I cross-examined Mr. McKaig with reference to a signed statement. In view of your ruling of this morning,

and in order to preserve my record, I would like to have the signed statement marked as Commission's Exhibit 481.

Mr. Thompson: Mr. Examiner, I will have no 2489 objection to this statement being put in evidence, provided I am permitted to recall Mr. McKaig for cross-examination with respect to statements contained in it.

If Mr. Kelaher wanted this document on the record, it should have been put in while Mr. McKaig was on the stand and when I had an opportunity to examine him.

Mr. Kelaher: Mr. Examiner, I would like to call your attention to the fact that the statement was available to counsel for Atlantic yesterday, and they reviewed it, read it, and had every opportunity to use it.

Hearing Examiner Kolb: That is a lot different, Mr. Kelaher, from putting it in evidence. In putting it in evidence I think probably he would have the right to recall him for cross-examination. I see no occasion for going through that procedure. I will just overrule the motion to put it in evidence.

Mr. Kelaher: I am not offering it in evidence at this time. I just want it marked for identification.

Mr. Thompson: I see no purpose in marking it for identification unless it will be offered.

Mr. Kelaher: It may be at some further time.

Hearing Examiner Kolb: Not as long as the witness is gone.

Mr. Mason: Mr. Examiner, at this point I would like to move to strike the testimony of Mr. Sartoff and 2490 Soukup so far as respondent Goodyear is concerned.

Hearing Examiner Kolb: The motion of the respondent Goodyear to strike the testimony of the witnesses, since their testimony pertains entirely to Firestone, to that extent that testimony will be stricken as to Goodyear, but will remain in the record as to Atlantic.

We will take a recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: May I call to the stand Mr. Adam Lozanski.

ADAM LOZANSKI, was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

Q. Would you give the reporter your full name and address?

A. Adam Lozanski.

Q. Where do you live?

A. 2025 East Ramblewood Road, Baltimore.

Q. Are you the lessee of an Atlantic service station?

A. Yes, sir.

Q. What is the address?

2491 A. 22nd and Howard Streets.

Q. H-o-w-a-r-d?

A. Yes, sir.

Q. Is that located in Baltimore?

A. Yes, sir.

Q. Mr. Lozanski, was Howard Street once called Oak—O-a-k—Street?

A. Yes, sir.

Q. How long have you been a lessee of that station?

A. Under my own, 13, and one year working for somebody else. A Mr. Fuchs, for one year—F-u-c-h-s. He has now passed away. He passed away about two years ago, I imagine.

Q. Then you were for one year at that station under him?

A. Under him, yes. I worked for him and then I went in for my own. It would be 14 years altogether there.

Q. So that you took the lease about 1944?

A. Yes, sir.

Q. And you have been in the same station ever since?

A. Yes, sir.

Q. You have a three-year lease?

A. Yes, sir.

Q. This is probably your second three-year lease?

A. Yes.

Q. Do you remember that about 1951 Atlantic Refining Company started promoting the Firestone TBA line?

2492 A. Yes, I do. I recall that.

Q. Before 1951, what kind of tires and batteries did you handle at your service station, and from whom did you buy them?

A. I bought them from most anybody. I bought a lot from Lee, Exide, Willard, Bowers.

Q. This is before 1951?

A. Yes, sir.

Q. Did you also buy from Charlie Johnson?

A. Oh, yes. Yes, sir.

Q. Was he a friend of yours?

A. Yes. I would say Charlie is a friend of mine, yes.

Q. And you bought Lee tires and Exide batteries from him, I suppose?

A. Yes; yes, sir.

Q. At the time Atlantic changed over to promoting the Firestone line, do you recall receiving a letter from Mr. Colley, of the Atlantic Refining Company, which has been marked for purposes of identification in this record as CX-150, dated March 1, 1951, and is called "A Statement of Atlantic's TBA Policy"? Would you be kind enough to look at that letter and tell me if you recall receiving it back in those days.

A. Yes, I do recall that.

Q. Thank you. Now, I show you another letter 2493 from Mr. Colley, addressed to dealers on August 28, 1952, entitled "A Restatement of Atlantic's TBA Policy", which is identified in this proceeding as Exhibit CX-206.

I ask you to take a look at that letter and let me know whether you remember having received it.

A. Yes, I do. I recall that.

Q. Mr. Lozanski, after Atlantic started promoting the Firestone brand, what tires did you handle at your service station?

A. Well, I tell you, I have handled so many of them, I have handled General, I have handled Goodrich, I have handled McCord, I have handled Shennuits. I have handled all kinds of tires, sir. Any particular tire that I could get a good price on I would handle, or any particular tire that a customer wanted I would get.

Q. And you are referring to the period after 1951?

A. Well, I am going to be honest with you sir. I handled anything I want since I have been up there.

Q. Did you continue for a while after March of 1951 to handle Lee tires, too?

A. Yes, I did. I handled them off and on. In other words, sometimes I felt sorry for the salesman. If he cried hard enough for me I would maybe buy a few tires and make me feel good.

Q. And do you also carry, and have you also carried some Firestone tires?

A. Oh, yes, sure.

Q. From what store do you buy the Firestone tire?

A. Howard and 21st.

Q. Is that right close to your station?

A. One block from it.

Q. Is that a regular Firestone store?

A. Oh, yes. Been there for years. One of the first Firestone stores ever built in Baltimore.

Q. Do they give you good service?

A. Well, I don't depend on too much service because when I need anything it is so close we just run down and get it. Three minutes to five minutes and we get what we want.

Q. What batteries have you been handling since 1951?

A. I have handled some batteries, I can't even remember the names, already. I have handled Best, Exide, Willard, Firestone.

Q. Bowers?

A. Bowers. I have handled quite a few batteries in my time.

Q. Do you buy batteries on price? Is that your primary consideration?

A. Well, not necessary, sir, because I am not in the position to buy anything in job lots to save any extra money, because I am really too small, to be honest with you. 2495 The last four or five years I have had a little too much sickness. It really took what little bit of capital I had. It really took it away from me. I just buy as I need in the way of speaking.

Q. How about accessories; where do you get most of your accessories?

A. Well, I get—I buy from Firestone, I buy from Quaker City a few items.

Q. Auto Parts?

A. Quaker City, H & Z Sales.

Q. All these things that you buy you openly display at your station so anybody who comes in can see them?

A. Oh, yes, sure.

Q. Do you sell them on Atlantic credit cards?

A. Sure, I will sell them on Atlantic credit cards. That is as good as cash to me.

Q. And has Atlantic ever criticized you for selling these non-Firestone items on credit cards?

A. Nobody ever said anything to me, sir.

2496 Q. Has Atlantic ever criticized you for handling non-Firestone TBA?

A. No, sir.

Q. Ever told you to stop buying it?

A. No, sir.

Q. Ever told you to get it out of your station?

A. Well, if they did—

Q. Go ahead. Finish your answer.

A. I just would tell them to get the hell on out, to be honest with you.

Q. In other words, you make your own decisions?

A. Look, I got my time and money invested up there. Atlantic Refining Company may own the building, but that is all. My time and efforts are there.

Q. They don't try to force you to do anything you don't want to do?

A. No, sir.

Q. They don't use any pressure on you of any kind?

A. No, sir.

Q. You feel free to buy any kind of TBA that you want?

A. Yes, sir, always did.

Q. And you do it?

A. Yes, sir, always did.

Q. And you do buy anything you want?

A. Yes, sir. I tell you, I would rather buy from
2497 Firestone anyway for the simple reason is this: It saves—if I want to buy a couple of tires, all I got to do is send a car down there and they will even put them on for me, and I will still make my same amount of profit. So I mean, I have a good deal there.

Q. Does Firestone give you a decent price?

A. Yes, sir.

Q. When your lease comes up for renewal, do you ever have any trouble getting it renewed?

A. I don't know what you mean by trouble, sir.

Q. They don't tell you that they won't renew your lease unless you buy more Firestone TBA or something?

A. No. No, they have never said that to me.

Q. Have they ever mentioned Firestone TBA at the time of lease renewal?

A. No, sir.

Q. You have been in business a long time. Do you have a lot of other stations that are competing with you in that area?

A. Yes, there are quite a few around that area.

Q. Have you had chances to leave Atlantic and go as a lessee with another company?

A. Oh, I could have done that—I could have done that quite a few times.

Q. Do you remember some of the oil companies that have offered you stations?

2498 A. I could have went with Crown; I could have went with Amoco; I could have went with Sinclair. Quite a few companies I could have really went with. I never made no effort. They came around to me, as far as that goes.

Q. Do you recall if a man came to see you some years ago, about 1953, and said he represented the Federal Trade Commission and asked to talk to you?

A. I believe I do recall something about that.

Q. Have you got any present recollection of what happened, or what was said, or what he did and what you said, and so forth? If, so, just tell us in your own words, will you?

A. As far as I can recall, he said something about asking me whether the company puts any pressure on my buying anything; did I have to buy something from them.

And I told him at that time definitely no. It has been so long I can't recall every word that I mentioned to him.

Q. Did he write things down when you were talking to him, do you recall?

A. If I am not mistaken, he had some sort of a little black book that he was writing this down in, as far as I can recall.

Q. Did he show you what he had written after he wrote it down, do you remember?

A. I am going to be honest with you. I don't remember.

Q. Do you remember whether you signed any kind of a statement?

A. I may have, sir. I may have. Because at that 2499 time, if I can recall, I think I was right busy to begin with, and I was sort of in such a hurry to get my work done, because I am a stickler for time. In other words, if I promised a man an automobile at 2:00 o'clock, I like to have that thing rolling at least 10 minutes to 2:00. And I really don't recall. I will be honest with you.

Q. Did he leave with you a copy of whatever he wrote down?

A. No, sir. That I don't have. No. I don't have that.

Mr. Thompson: Mr. Lozanski, those are all the questions that I have. Mr. Kelaher probably has a couple of questions that he would like to ask you.

Cross-Examination by Mr. Kelaher.

Q. I would like to review some of the answers you gave on direct examination and see if I have them correct.

Before Atlantic changed over to the Firestone TBA plan, in 1951, you testified that you bought a lot of Lee tires, is that correct, from Charlie Johnson?

A. Well, I mean I bought merchandise from Charlie Johnson. I mean that was the—I bought a lot of merchandise, tires and batteries and tubes.

Q. What products were they? Lee tires?

A. Lee tires.

Q. Exide batteries?

A. Yes.

2500 Q. And accessories?

A. Such as cleaners, DuPont cleaners and stuff like that. And I also bought from other places.

Q. And you also purchased Willard batteries, did you say, and Bowers batteries?

A. Yes, sir.

Q. And who were your Bowers batteries purchased from?

A. Right from the—

Q. From the Bowers branch?

A. Yes. Down on Edgear Street, I think they were.

Q. And you purchased Willard batteries. Who were they purchased from?

A. As far as I can recall, I think it was—Willard was purchased from Ditch, Bowers and Taylor. I don't think I bought too many there. I never went for Willard too much because Willard was always a real high priced battery in a way of speaking, and my neighborhood don't call for that kind of prices, in other words.

Q. After the change over in 1951, when Atlantic began to sponsor Firestone TBA, did that affect your purchases of tires? Did you begin to purchase from some other source?

A. No. I bought what I wanted, sir.

Q. And did you handle any one tire principally after the change-over? Since the change-over?

A. No. Not necessarily, no, sir.

2501 Q. With respect to batteries, did you handle any other brand of batteries principally since 1951?

A. I'll tell you, being as you are bringing batteries up, I had H. R. Boyd up until last year. In fact, to tell you

the truth, I owe him a few more dollars, since you mention that. I had batteries under consignment even.

Q. And did you purchase—did you increase your purchase of Firestone tires after the change-over in 1951?

A. Did I increase?

Q. Did you increase your purchase of Firestone tires?

A. No. I think I am selling less tires now than I ever sold since I have been in business.

Q. Less tires overall?

A. Overall.

Q. At the time of the change-over in 1951 did you decrease your purchases of Lee tires and increase your purchases of Firestone tires?

A. I wouldn't say that, because I tell you the reason why, I never sold much of TBA to amount to anything, to be honest with you.

Q. You have a very low sales volume of TBA?

A. Yes. I have a low sale volume.

Q. You mentioned that your station is at a bad location. Is that the reason?

A. It is that, yes. It is that.

2502 Q. Prior to the change-over in 1951, did you have any service station identification on your station, any window decals or outside signs?

A. Referring to what?

Q. You know, the window valances. Do you have window valances in your station? Do you have any advertising signs in your station?

A. Brake work.

Q. I am talking about a Firestone sign.

A. No, I don't have anything like that. I don't want it up there. I am not going to make Firestone rich. I want to try to get rich myself, if I can.

Q. Did you at any time since 1951 have Firestone identification on your station?

A. Never. If I put too much Firestone up there they will go down the street and put it on a budget anyway. I can't afford to carry a budget.

Q. You stated on your direct examination that you are located close to a Firestone store, is that correct?

A. Right down the street, yes, sir.

Q. Does that affect your sales of TBA, the fact that you are near a Firestone store?

A. I think it affects any station. Any station close by, because after all they can do business in a way that the average little man can't do.

2503 Q. So you find that the Firestone store competition is difficult to meet, don't you?

A. No. It is not difficult to meet. The only thing is I can't budget anything like they can. That is the only difference. Other than that there is no other reason.

Q. What do you mean by budget?

A. I mean a dollar down and a dollar a week. You know how they can do it. They have the money to do that; I don't.

Q. You can't afford to sell on credit?

A. That's right. That is the only thing about that.

Q. Isn't it true that a Firestone store can sell at or about the same price that you can sell your Firestone tires?

A. I think when it comes to cash, if a man wants to pay cash money, you cannot go down there and get anything cheaper than you can get it for, in other words.

Q. Would it be about the same price?

A. About the same thing. But I am not going to let nobody—I am not going down there and spend, say, \$15.00 for a tire and have a man come in and give me a dollar down and a dollar a week, wear the tire out, and still owe me \$14.00. That isn't going to happen.

Q. You are not financially able to do that?

A. I can't do it.

Q. You were asked on direct examination if you had been interviewed by a representative of the Federal
2504 Trade Commission. Do you recall that question?

A. Some years back, yes, sir. I do remember that.

Q. That was about 1953, was it not?

A. I would say about around there, yes, sir.

Q. And at that time weren't you handling principally Firestone tires?

A. In '53?

Q. Yes.

A. No, sir.

Q. Weren't you handling—

A. I had all kinds of tires then. I had some Good-years, I had some—I may have had some U. S. Royals; I may have had a few McCreary tires, too; Lanvale—I was dealing with Lanvale at that time, too, if I recall, because they were buying gasoline from me, because they have quite a few cars and trucks. They said if I buy some tires from them they would sort of give me some business, in other words.

Q. Isn't it true that at that time you were handling principally Firestone tires, at the time of that interview?

A. No. I can't recall that I would say that I did, no sir.

Q. Isn't it true that at the time of the interview you were handling principally Firestone batteries?

A. No.

Q. You don't recall that either?

A. No. I wouldn't say—gentlemen, I will tell you
2505 the truth. I handled just what I felt like handling and bought what I did.

Q. I am not trying to embarrass you. I am trying to refresh your recollection.

A. I know, but you—I have done pretty well so much what I felt like doing up there, that I mean, throwing

these questions at me like this, I can't remember everything, you know.

Q. That is true.

Mr. Kelaheer: May I have a few minutes recess?

Hearing Examiner Kolb: Yes.

(Thereupon, a short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

By Mr. Kelaheer:

Q. Mr. Lozanski, getting back to your conversation with the gentleman from the Federal Trade Commission in 1953, I believe it was, did he ask you questions concerning your TBA at that time?

A. Yes, sir.

Q. And did you answer those questions to the best of your ability and knowledge?

A. Yes, I did.

Q. And after they were answered, did he make notes of those statements?

A. Yes. If I am not mistaken, he had sort of a 2506 black book, writing in some little black notebook.

Q. Do you recall after that whether he handed you a form which contained the substance of your statements to him and asked you to read it?

A. I am going to be perfectly frank. I don't remember that.

Q. You don't recall?

A. I really don't recall. I would be lying if I told you I did.

Mr. Kelaheer: Your Honor, I regret doing this, but I am going to have to ask that this document be marked for identification as Commission's Exhibit 481.

(The document referred to was marked Commission's Exhibit No. 481 for identification.)

(The document was handed to Mr. Thompson.)

Hearing Examiner Kolb: Are you offering that in evidence?

Mr. Kelaher: Not yet, your Honor.

By Mr. Kelaher:

Q. Mr. Lozanski, I hand you Commission exhibit for identification 481 and ask you to take your time and read it. Is that your signature at the bottom?

A. Yes, I would say that is.

Q. Does that refresh your recollection as to your interview with the Federal Trade Commission attorney-examiner?

A. If that was at the same time, the same man, 2507 then most likely that is it, then.

Q. I would like to call your attention to "Item 3, TBA—brands, suppliers and prices: A, tires: 'principally Firestone'." Principally Firestone is in quotes.

A. What do you mean it is in quotes, principally Firestone?

Q. The document states thereon that at that time you were carrying principally Firestone tires, is that correct?

A. Well, at that particular time most likely the principal reason I did—I got anywhere from 10 to 20 percent more discount from Firestone than I was getting from any other tire dealer. That is the reason I went to Firestone. That is the reason I went to Firestone, because I was getting I know at least 10 to 20 percent more discount on a tire.

Q. So you were stocking principally Firestone?

A. I didn't stock any particular tire. If you call two or three tires a stock, then—which I don't—

Q. You were handling principally Firestone, according to your statement. Under batteries, I quote "Firestone principally." So at the time of the interview you were also principally carrying Firestone batteries, isn't that correct?

A. At the time that I can recall on any of this stuff here, I had any tire or any battery at all. I had Bowers in; I could have had Exide in; I could have had most any type of battery with that. I wasn't any one particular line that I had. The only reason why I went to Firestone 2508 is due to the fact that I got a better price. That is the only reason.

Q. But you did go to Firestone?

A. Certainly I went there. Why shouldn't I? For a better price.

Q. On direct examination you stated that you have never had any Firestone identification in your station since 1951, is that correct?

A. You mean such as poster or window?

Q. Do you have a window valance?

A. No. Nothing like that. No decals or anything.

Q. An outdoor sign of any kind?

A. I have an outdoor sign for brake work, such as Power Mate—stuff like that, referring to gasoline.

Q. You have no Firestone signs on your station, on the premises?

A. No, sir, I don't.

Q. According to this statement, CX-481 for identification, at the time of the interview your station had "Firestone identification."

A. It must have been very small, because I never had anything on the window.

Q. What do you mean? What type of identification did you have? What type of Firestone identification did you have?

A. It may have been like, say, for instance, line on a lube window for instance, they might have sent a 2509 beautiful piece of—a picture of a tire of a racing car or something like that that would be worth-while looking at. That is the only identification that I ever recall putting up.

Q. You know most service stations have a window valance?

A. Yes, sir, decals and stuff like that.

Q. Yes.

A. I have nothing like that.

Q. And you have no outdoor sign?

A. No, sir.

Q. And you did not at the time of the interview on March—

A. No, I never did.

Q. (Continuing.) —19, 1953?

A. Never did. Never.

Mr. Kelaher: Your Honor, I offer CX-481 in evidence.

The Witness: In the first place, my windows are little to begin with. I believe it would make the window more attractive if I did, in other words, as far as that goes.

Mr. Kelaher: I have no further questions.

Hearing Examiner Kolb: Do you have objection?

Mr. Thompson: No objection.

Hearing Examiner Kolb: Mr. Mason, do you have objection?

Mr. Mason: No, but I move however to strike this testimony against Goodyear.

Hearing Examiner Kolb: It will be received.

2510 (The document referred to; heretofore marked for identification COMMISSION'S EXHIBIT NO. 481, was received in evidence.)

Hearing Examiner Kolb: The motion of Goodyear to strike the testimony of the witness as pertains to Goodyear will be sustained. It will remain in the record as to Atlantic.

(Witness excused.)

Hearing Examiner Kolb: We will adjourn until 2:00 o'clock.

(Thereupon, at 12:45 o'clock p. m., the hearing was adjourned, to reconvene at 2:00 o'clock p. m., this day.)

2511

Afternoon Session.

2:00 p. m.

Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: I wish to call to the stand Mr. Fred Koehler.

FRED KOEHLER was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

Q. Mr. Koehler, would you give your home address, please, to the court reporter?

A. 3900 Greenmount Avenue, Baltimore 18.

Q. I represent the Atlantic Refining Company in this matter. The gentleman on your right is Mr. Kolb, who is the presiding officer from the Federal Trade Commission conducting the hearings. This gentleman on your left is Mr. Kelaher, who is the attorney for the Federal Trade Commission. I have some questions. I would like to ask. When I get through maybe he will want to ask you some questions; I don't know.

Mr. Koehler, where is your service station?

A. North and Woodbrook—1400 West North.

Q. Are you a lessee of that station from the Atlantic Refining Company?

A. Yes, sir.

Q. About how many years have you been an Atlantic lessee?

A. About fifteen.

Q. Since about 1941?

A. 1941; that is right.

Q. Have you got a three-year lease from Atlantic?

A. Right now, yes, sir.

Q. And is this your first three-year lease or have you had three-year leases before that?

A. I have had a couple of three-year leases before that.

Mr. Kelaher: Mr. Thompson, could we have the date of his last lease so we won't have any problem on that?

By Mr. Thompson:

Q. Do you recall, Mr. Koehler, when you signed your very last lease?

A. I just signed it the other day. It is due now.

Q. Just a few days ago.

Before you became an Atlantic lessee, were you an employee of Atlantic?

A. I drove a truck for them, yes, sir.

Q. Was that your first job when you started work, or did you have other jobs?

A. Oh, no, I had other jobs before that.

Q. In the operation of this station, do you handle TBA?

2513 A. Yes, sir.

Q. Do you recall that about 1951 Atlantic announced that it was going to start to promote the Firestone line of TBA?

A. I heard it in a roundabout way. I didn't hear it directly. I mean no one came out directly and told me about it.

Q. I would like to ask you, sir, whether you recall receiving an announcement letter on or about March 1, 1951, from Mr. Colley, of Atlantic, entitled "A statement of Atlantic's TBA policy"—

A. Yes.

Q. —which is identified in this record as CX-150. Would

you take a look at that, sir, and see if that refreshes your recollection (handing)?

A. Yes, I remember getting one like this.

Q. Here is another one dated August 28, 1952, also from Mr. Colley, called "A restatement of Atlantic's TBA policy," which has been identified as CX-206. Would you be good enough to look at that and see if you recall receiving that one (handing). Take your time, sir, there is no hurry.

A. I believe I did get one of these, yes.

Q. Before March of 1951, you operated this station for about ten years, did you not?

A. Yes. About ten years.

Q. Do you recall what brands of TBA you were 2514 carrying from 1941 to 1951?

A. I handled most anything. I handled, I think, up to that time, Exide batteries, Lee tires, I think I handled Edison batteries, too, at the time. I actually bought from anyone. I just can't remember who all I did buy from. I bought from practically every jobber that came in the place, if I needed anything.

Q. Was Charlie Johnson one of your suppliers?

A. Charlie Johnson was one of them.

Q. After Atlantic changed to the Firestone plan and started promoting Firestone, what tires did you carry at your station at first?

A. I still handled what I had been carrying. I handled Lee, then I got Shenuits. I handled Shenuits tires. I handled Goodyear or any other brand of tire if the customer demanded that particular kind. I would send down and get that.

Q. Did you purchase Vanderbilt tires from a man named Joe Scheiner?

A. Joe Scheiner, yes. That is the S&S Tire Company.

Q. Do you recall whether after 1951 you also carried US Royals for a while?

A. I never carried them in stock.

Q. Never carried them in stock?

A. No.

2515 Q. You bought them on a pick-up basis?

A. That is right.

Q. Did you buy them from Burke-Savage when you bought them?

A. I bought some from Burke-Savage, yes, sir. I would send down and get them, see.

Q. Still talking about tires, as of today—now talking as of June 1958—do you handle Firestone tires?

A. I have two.

Q. When did you first begin to stock Firestone tires?

A. I put in Firestone tires when I had a salesman who changed his position. He was formerly my insurance collector, and he went to work for Firestone. He stopped in to see me, and he told me that I have known him so long, that if there was anything I could throw his way to help him with his job, he would appreciate it.

Q. Was his name Henry Scheck?

A. Henry Scheck. I think it is S-c-h-e-c-k.

Q. About when was it that you first bought Firestone tires?

A. I just don't remember. But I know it was the day that he changed his job. I guess it was maybe four months.

Q. That would be about February or March 1958?

A. Somewhere like that.

Q. Was that the first time that you had ever stocked Firestone tires?

A. That was the first time I ever stocked Firestone tires.

2516 Q. After 1951, what batteries did you carry at first?

A. Autolite.

Q. Did you drop the Exide line?

A. I dropped the Exide line, yes, and put in Autolite. I got a better deal by Autolite and I put them in.

Q. About how long did you continue to carry the Autolite battery line?

A. I carried Autolite batteries up until the same time I changed over and bought the tires from Mr. Scheck.

Q. Until about four months ago?

A. That is right. I still handle Autolite now. I haven't done away with them. But I handle two now. I handle some Firestone and some Autolite.

Q. And is the spring of this year the first time that you have ever stocked Firestone batteries?

A. That is the first time. I had bought some years ago, and I sent four of them back. And I never put any more Firestone in from then on.

Q. Until this spring?

A. Until this spring.

Q. Since 1951, what sources of supply have you had for your accessories which you handle at the station?

A. The same sources of supply that I had during the War. I have had R. J. Looek, R. W. Norris, Service Parts, Replacement Parts, Baltimore Gas Light, Standard 2517 Battery Company, Martin brothers; I buy from all of those.

Q. Are you still buying from those same companies?

A. Yes, sir.

Q. Have you been buying accessories at all from Firestone?

A. No.

Q. All these non-Firestone tires and batteries and accessories which you have around the station, have they been openly displayed?

A. Oh, yes.

Q. Visible to anybody who came in?

A. Anybody at all, yes, sir.

Q. Do you from time to time have Autolite and Champion advertisements around the station?

A. Yes, sir. Vanderbilt, also. Whenever I get the advertisement I stick it up on the wall, or on the window.

Q. Do you sell these non-Firestone products on Atlantic credit cards?

A. Yes, sir.

Q. Have you ever been criticized by Atlantic for doing that?

A. No.

Q. Have you ever been criticized by Atlantic for carrying these non-sponsored TBA items?

A. No, sir.

Q. Did anybody ever suggest or tell you that you 2518 ought not to buy them?

A. No, sir.

Q. Did anybody ever tell you to get them out of your station or to hide them?

A. No, sir.

Q. Do you make your own decisions about what you buy?

A. Yes, sir.

Q. Have you felt at all times free to buy any kind of TBA you wanted from any sources you wanted?

A. I certainly have, yes, sir.

Q. When your lease comes up for renewal, have you ever had any difficulty getting it renewed?

A. No, sir. Not in the least.

Q. Has the fact that you have not been carrying Firestone TBA ever been held up against you by anybody?

A. Not to my knowledge.

Q. Do you feel that it has anything at all to do with your lease renewals?

A. Absolutely not.

Q. Mr. Koehler, you have been quite a successful service station operator, have you not?

A. Yes, sir.

Q. Have you had offers from other companies than Atlantic? Have other companies wanted you to take leases from them?

A. Yes, sir.

2519 Q. And to drop Atlantic?

A. Yes, sir.

Q. Has that happened over the years a number of times?

A. Yes, quite a few times.

Q. Since you have been in this service station business for 17 years, I would like to ask your opinion as an expert. Do you think that the Atlantic TBA program with Firestone would be helpful and beneficial to young, inexperienced dealers?

A. Very much so.

Mr. Kelaher: Objection, your Honor. This is opinion testimony.

Mr. Thompson: We have had a ruling on that this morning with a man with similar qualifications.

Hearing Examiner Kolb: Objection overruled.

By Mr. Thompson:

Q. Do you recall, about March 1953, a man came to see you and identified himself as representing the Federal Trade Commission?

A. Yes, sir.

Q. Did he interview you at your station?

A. At the station. He asked me some questions.

Q. Did he take notes of what you said?

A. He took notes, yes, sir.

Q. Did you ask him to look around your station?

A. After he asked me to sign the papers, I told 2520 him after I read it that I would sign it. And then he told me that he didn't believe I didn't have anything there from Firestone.

I said, "My place is open; I will show you." So I myself took the man upstairs and all through the place and asked him if he could find anything there at all from Firestone, I would like to see it. At that particular time I had nothing in there from Firestone.

Then he told me that he wasn't satisfied. He said, "My boss won't believe it."

So then they came back, about a week or so later with another man—there was two of them—and I told him the same thing and took him around and showed him. There was nothing in my place at all from Firestone.

Q. Did you tell your Atlantic salesman about these people coming to see you?

A. Yes, I told Jack Crawford about it. That was my salesman at the time.

Q. Did Jack come out to see you and ask you whether you would write a statement of what you told these people?

A. He came out.

Q. Do you recall whether you wrote a statement about what you told the Federal Trade Commission people?

A. Oh, yes.

Mr. Thompson: I will ask that this document be marked as an exhibit for identification.

2521 (The documents referred to were marked Respondent's Exhibits A-10-A through A-10-E for identification.)

(The document was handed to Mr. Kelaher.)

By Mr. Thompson:

Q. Mr. Koehler, I am now going to show you a document which has been marked for identification as Respond-

ent's Exhibits A-10-A through A-10-E, and ask you whether this bears your signature on the third page?

A. Yes, sir, that is my signature.

Q. And there is another signature here called "Witness." Whose signature is that?

A. That is Jack Crawford, the company salesman.

Q. Do you recall writing this statement, sir? Do you recall the fact that you wrote a statement and gave it to Mr. Crawford?

A. That is right.

Q. Would you be kind enough to read it and see whether it refreshes your recollection about what you told these Federal Trade Commission people in March of 1953.

A. That is right. I have everything in there.

Q. Mr. Koehler, did a Federal Trade Commission representative give you a copy of whatever statement that he took from you?

A. That is right. And I signed it. He gave me a copy.

Q. And he gave you a copy?

A. Yes, sir.

Q. Do you know what happened to that copy, sir?

2522 A. I mailed it in to the office.

Q. You are not confused between that statement and this one, are you, sir?

A. No, no. That is practically the same statement, right there.

Mr. Thompson: If your Honor please, it will save a lot of time if I just offer this in evidence. If Mr. Kelaher objects, I will go through the tortuous procedure of asking Mr. Koehler to refresh his recollection and repeat what he told the Federal Trade Commission investigator.

So it is your choice, Mr. Kelaher.

Mr. Kelaher: Is this being offered as past recorded, or to refresh his recollection? What is the basis of your offer?

Mr. Thompson: Do you object to it on either ground?

Mr. Kelaher: I am not saying I will object to it. I am just asking.

Mr. Thompson: Frankly, if you object, I don't think this document is admissible because he remembers the conversation. I was just trying to save time.

Mr. Kelaher: Then on the basis of your own statement, I should formally object.

Mr. Thompson: You can object if you wish, in which case it will waste a lot of time because it will put me in the position where I have to ask him to refresh his 2523 recollection and state as of today what he said back in 1953. I will do it that way if you prefer.

Mr. Kelaher: May I look at that again?

Mr. Thompson: Surely (handing).

Mr. Kelaher: I have no objection, your Honor, to it going in as his statement of what he told the Federal Trade Commission attorney-examiner.

Hearing Examiner Kolb: The document will be received in evidence as Respondent's Exhibit A-10-A to A-10-E, inclusive.

(Whereupon, the document referred to, heretofore marked RESPONDENT'S EXHIBIT A-10-A through A-10-E for identification, was received in evidence.)

Mr. Thompson: Thank you, Mr. Koehler. As far as I am concerned, those are all the questions that I have to ask you. Mr. Kelaher may have some questions.

Q. Mr. Koehler, with respect to the statement which was just introduced in evidence, RX-A-10-A through A-10-E, was that prepared by Mr. Crawford for your signature, or did you dictate the statement?

A. I wrote that. I dictated exactly what went on, and he copies it down.

Q. Then did he prepare this statement, or did you?

A. He prepared that one.

Q. He prepared that?

A. Yes.

Q. And he sent it to you and you signed it?

A. That's right. He brought it to me.

Q. You read it, signed it, and sent it back to him?

A. That's right.

Q. And at the same time did you also send a copy of the statement you signed for the Federal Trade Commission representative to Atlantic?

A. To Atlantic, yes, sir.

Q. That doesn't appear in their files apparently.

Mr. Thompson: We have been unable to find it.

I would be perfectly delighted if Mr. Kelaheer would supply us with a copy which we can't find.

Mr. Koehler, would you have any objection to Mr. Kelaheer releasing to Atlantic the statement which you 2525 signed and gave to the Commission.

The Witness: No, indeed.

Mr. Thompson: Mr. Kelaheer, may I have a copy?

Mr. Kelaheer: It is not within my authority to give you a copy. If you wish to make application to the Commission for it you are certainly entitled to do that.

By Mr. Kelaheer:

Q. What type of station do you operate? I mean in appearance. Do you have window space?

A. I have a roof over my place.

Q. Do you have a large window in front?

A. No. Two medium sized windows. I don't have no big display window.

Q. Have you ever had Firestone identification or Firestone signs up?

A. Now, I have on my tires. But I didn't have before.

Q. You had none before?

A. No.

Q. Do you have any window decals?

A. Didn't handle their products so I didn't need any decals.

Q. Was there any identification at all on your—

A. Absolutely none.

I have them now. I just put them up there. I have two signs in the tires for the sale, Firestone tire sale. That is only for the sale over the Fourth of July. Previous to that I didn't have any, no.

Q. And you had no signs on your premises?

A. Not on the premises, no.

Q. I believe you testified that you now stock Firestone tires, is that correct?

A. Two. I have two.

Q. And you have Firestone batteries?

A. Yes, sir.

Q. And you handle what? Firestone batteries?

A. Autolite batteries.

Mr. Keiaher: No further questions.

Mr. Thompson: Thank you, sir.

Hearing Examiner Kolb: That is all.

(Witness excused.)

We will take a short recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Ballard: Mr. Examiner, at this time I would like to call to the stand Mr. John Eckhardt.

JOHN A. ECKHARDT was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

2527 *Direct Examination by Mr. Ballard.*

Q. Mr. Eckhardt, would you give your name to the reporter?

A. John A. Eckhardt.

Q. Would you give your residence address?

A. 3914 Foster Avenue, Baltimore 24.

Q. Mr. Eckhardt, the gentleman on your right is Mr. Kolb. He is the presiding officer at this hearing. The gentleman on your left is Mr. Kelaher. He is a lawyer for the Federal Trade Commission.

Mr. Eckhardt, what is the address of the Atlantic station that you lease?

A. Fleet and Fagley Streets.

Q. That is in Baltimore?

A. Baltimore 24.

Q. How long have you been connected with that station?

A. Altogether about 20 years I have been there. But three years, a little better than three years as a lessee.

Q. And before you were the lessee, what was your connection with the station?

A. The station was run by my brother and I was an operator for him.

Q. Your brother was Tom Eckhardt?

A. Yes, sir.

Q. During the time that your brother was the
2528 lessee, were you familiar with the TBA stock that was carried in the station?

A. Yes, sir.

Q. And were you familiar with the places where that stock was purchased?

A. Yes.

Q. Speaking of the present day, sir, what brands of tires do you carry at that station now?

A. Right now I handle Firestone and Shenuit.

Q. Can you give us an approximation of how much is Firestone and how much is Shenuit?

A. I would say it is about 50/50.

Q. Where do you buy your Firestone tires?

A. From Jack's Tire Service.

Q. Where do you buy your Shenuit?

A. Plotkin's.

Q. What batteries do you handle?

A. Delco.

Q. Where do you get those?

A. R. W. Norris.

Q. Speaking of accessories, and by accessories I don't include repair parts but polishes, cleaners, hoses, belts, and that kind of thing—where do you buy most of your accessories?

A. Most of my stuff is pretty well scattered. I 2529 will give you a few names if you want to put them down: Ditch, Bowers and Taylor; Ancorp.

Q. Is that called—

A. Ancorp-Salawitch; Richman's Auto Supply; Colmis; Salvo Auto Parts; Baltimore Auto. Is that enough or do you want some more?

Q. If you have some more, I would like to have them.

A. R. W. Norris; Baltimore Gas Light. That is as many as I can remember.

Q. Do you display those Delco batteries that you buy?

A. Yes, sir.

Q. Do you have a Delco battery rack?

A. A regular rack with a sign on top of it, "Delco Batteries."

Q. Is that visible to people who come into your station?

A. Definitely.

Q. Does it include the Atlantic salesman?

A. Oh, yes.

Q. Has the Atlantic salesman ever criticized you for carrying Delco batteries?

A. No, sir.

Q. Have they ever criticized you for carrying Shenuit tires?

A. No, sir.

Q. Do you feel free to buy any TBA you want?

A. Yes, sir, I do. I have been buying that way 2530 and I have never had anything jammed on me.

Q. Do you feel free to buy TBA from any source you want?

A. That's right.

Q. Mr. Eckhardt, do you remember the date of your first lease with Atlantic? Approximately?

A. May 1, 1955.

Q. Do you remember whether that lease was a one-year lease or a three-year lease?

A. One. My present lease is three.

Q. At the time your lease was renewed, was there any discussion with Atlantic about TBA?

A. No, sir.

Q. Mr. Eckhardt, I show you a document marked CX-207, which is a form of letter from the Atlantic Refining Company to all Atlantic dealers. This one is signed by Mr. Estlow, who was the manager of the Philadelphia, New Jersey, region.

I ask you if you remember receiving a letter like this but signed by Mr. Burns, the manager of your region?

A. Yes, sir, I received that.

Q. Mr. Eckhardt, do you buy any U. S. Royal tires today?

A. No, sir.

Q. Does anybody from Burke-Savage call on you today?

A. No, sir.

Q. Have they ever called on you since you were a lessee?

A. No, sir.

2531 Q. During the time that your brother, Tom, was the lessee, did he buy U. S. Royal tires from Burke-Savage?

A. Yes, he did.

Q. Do you know why he stopped buying?

A. No, sir; I can't answer that.

Q. Do you know why Burke-Savage stopped calling on the station?

A. No, sir.

Q. Were you or your brother, to your knowledge, ever instructed that Firestone is now selling Atlantic stations and you must put in a complete line of Firestone tires and accessories?

Mr. Kelaher: Objection, your Honor.

Mr. Ballard: What is the objection?

Mr. Kelaher: He is asking if it was ever said to the witness or his brother.

Mr. Ballard: I said, to his knowledge.

Hearing Examiner Kolb: Whether he knows or not?

Mr. Kelaher: What was the statement again?

(Statement read.)

Mr. Kelaher: Objection, unless it is a little clearer.

Hearing Examiner Kolb: I will overrule the objection.

Go ahead.

2532 A. No, sir.

By Mr. Ballard:

Q. Did your station ever put in a complete line of Firestone tires and accessories?

A. Never.

Mr. Ballard: I have no additional questions, Mr. Examiner. I think perhaps Mr. Kelaher will have some for you.

Cross-Examination by Mr. Kelaher.

Q. As I understand your testimony, you worked as an employee in your brother's station for some time, is that correct?

A. Yes, sir.

Q. Prior to the time when Atlantic began to sponsor Firestone TBA you testified you carried Lee tires.

Mr. Ballard: Mr. Kelaher, I don't think he so testified.

Mr. Kelaher: I beg your pardon. I will ask you.

By Mr. Kelaher:

Q. What tires did your station carry prior to the time Atlantic changed over to Firestone TBA?

A. My brother handled the tires then. He handled Lee tires, he handled U. S. Royal, and he handled Pharis.

Q. And at that time were U. S. Royal tires being 2533 purchased from Burke-Savage?

A. Most of them; yes, sir.

Q. And at that time Atlantic was sponsoring Lee tires, was it not?

A. Right.

Q. And your station, your brother's station, was purchasing Lee tires, isn't that correct?

A. Yes, sir.

Q. And your station does quite a large tire business, does it not?

A. No, sir.

Q. Insofar as your tires, batteries and accessories are concerned, referring to your brother's station, do tires constitute the major part of your TBA sales?

A. No, sir.

Q. Was there a time when they did constitute a major part of your TBA sales?

A. I would say it was quite a bit of it at one time. Between that and batteries, I would say were our biggest sales.

Q. Would that be around 1951-'52-'53?

A. No. I would say it would be back a little further than that.

Q. After the switch-over by Atlantic to Firestone TBA, your brother eventually discontinued purchasing U. S. 2534 Royal tires from Burke-Savage, is that correct?

A. I think he discontinued from Burke-Savage before that.

Q. However, you are not certain whether it was before or after, is that correct?

A. No. That is correct, I am not certain there.

Q. When did your brother's station begin to purchase Firestone tires in quantity?

A. I would say in the last couple of years that my brother was in the station he did not purchase very many Firestone tires because at one time he was doing some buying from C. E. Kimmel and Company.

Q. He did thereafter, sometime after the change-over by Atlantic to Firestone, decrease his purchase of Lee tires, did he not?

A. Well, Lee tires weren't handled at all by any of our callers after they stopped being handled by the Company. We had nobody calling on us from Lee Tires at all.

Q. So you stopped buying Lee tires?

A. Yes, sir.

Q. And at that time your brother began purchasing Firestone tires, is that correct?

A. No. He bought more Goodyear tires than he did Firestone.

Q. Did he also buy some Firestone?

A. He bought some, yes.

Q. What type service station identification do you
2535 have in your station?

A. Pardon me, I didn't understand that.

Q. What type service station identification do you have?
I am referring to window decals and outdoor signs.

A. I don't have any window decals at all. My station
is just listed as an Atlantic service station, but no decals
whatsoever on the windows.

Q. Do you have an outdoor sign on your station, on
the premises?

A. As to tires, no, sir.

Q. Is there a Firestone sign on your premises?

A. No, sir.

Q. And at the time your brother operated the station
after March, 1951, there were Firestone signs on the
premises, were there not?

A. Yes, there were decals.

Q. And there was also a Firestone outdoor sign up,
was there not?

A. I can't recall that.

Q. Do you make any purchases of accessories at all
from the Firestone store?

A. Very little.

Q. But you do make some?

A. Some.

Q. I noticed you didn't mention Firestone on your
2536 direct examination. You do make some purchases?

A. Yes, sir. It was an omission. It was my fault.

Q. Some of these suppliers you mentioned must sell
to you in small quantities, don't they?

A. That's right.

Q. Would that be true of the major part of them?

A. Well, a lot of these I buy from because it is very
convenient for me. Most of them are within six blocks

of my station, which is convenient for me to use them as a warehouse.

Q. So you don't stock from these particular buyers, do you?

A: Oh, my shelves are always stocked; yes, sir. But I can buy in smaller quantities off of these people.

Mr. Kelaher: No further questions.

Mr. Ballard: I have no questions, your Honor.

Hearing Examiner Kolb: That is all, Mr. Eckhardt. Thank you very much for coming down.

(Witness excused.)

Mr. Mason: Your Honor, I would like to make my usual motion to strike the testimony of the last two witnesses as having no bearing on Goodyear, and strike them as to Goodyear.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

The motion of Goodyear to strike the testimony of 2537 last two witnesses, Koehler and Eckhardt, will be sustained as to Goodyear, but the testimony will remain in the record as to Atlantic.

Mr. Thompson: May we have a minute's recess before we adjourn?

Hearing Examiner Kolb: All right.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

TOM ECKHARDT was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Ballard.

Q. Please state your name for the record.

A. Tom Eckhardt.

Q. You were, I believe, the lessee of the Atlantic station at Fleet and Fagley Streets in Baltimore for some 15 years?

A. 18 years. From '37 to '55.

Q. You are not an Atlantic lessee today, are you?

A. No, sir.

Q. Are you connected with Atlantic in any way?

A. In no way.

Q. Mr. Eckhardt, when you took over your station in 1937 did you carry any tires at that station then?

A. Very few. We didn't have any money to buy them.

Q. When you did begin to buy the tires, what kind did you buy?

A. We bought them from Burke-Savage and some from Carl Marshall. Just a couple odds and ends. We never supplied many—stocked many tires.

Q. The tires you bought from Burke-Savage were U. S. Royals?

A. Well, it was U. S. Royal and Pharis and I think Silver Eagle was another off-brand tire that he had on that line, too; I bought some from Surplus Tire on Hanover Street here.

Q. Did you buy tires from Kimmel?

A. C. E. Kimmel. That was a little bit later. That wasn't in the early years, though.

Q. What kind did you buy from Kimmel?

A. The reason we bought from Kimmel, Kimmel always had a place down town. Then they moved up the street from us on Fleet Street, Fleet and Dean. I went up and contacted them, trying to get their business. They shot their gasoline and repair work to my station and I felt kind of obligated there to buy their tires.

That was the main reason for pretty well dropping most of my other connections.

Q. What kind of tires did you buy from Kimmel?

A. Goodyear and U. S.

2539 Q. And did you pretty much drop Burke-Savage at that time?

A. Pretty well, sir.

Q. Could you give us the approximate date of that?

A. That might have been in the early '50s. Somewhere around in there. It may have been '49, something like that, as far as my memory can serve me.

Q. After you had been dealing with Kimmel for a while, did you change your—transfer your tire business to another principal supplier?

A. After a while I did, because there was a fellow named Jack Spangenberg.

Q. Would you spell that?

A. S-p-a-n-g-e-n-b-e-r-g. He was Kimmel's top man, and he left Kimmel and went in business for himself. He bought out Carl Marshall who had a place of business on Bank and Eaton Street, who was at that time handling General tires. Jack went with him. And right previous to Jack moving out from Kimmel, Kimmel started splitting his gasoline and repair work all around the city. He said he was losing business. And so I was losing a lot of what I was getting as gravy train.

When Jack went over to Carl Marshall's place, when he bought it out, I had the same set-up with Jack with regard to servicing his equipment.

Q. What kind of tires was Jack selling at that time?

A. He was selling General at that time.

2540 Q. Did he later change his brands?

A. Later on, I don't know, it may have been a year, he switched over completely to Firestone, then I started buying Firestone tires.

Q. Is he the Jack's Firestone Store today?

A. Yes, sir. That is on the corner of Bank and Eaton Streets.

Q. During the time that you were an Atlantic lessee, Mr. Eckhardt, what batteries did you carry?

A. Exide and Delco and Willard.

Q. During that time did the Atlantic personnel ever criticize you for not carrying Firestone?

A. In no way at all.

Q. Tires and batteries?

A. In accessories, tires or batteries, they never criticized me at all.

Q. Did you feel free to buy any TBA you wanted?

A. I didn't only feel free, I bought that way.

Q. Do you know Mr. Eugene Savage, a salesman for the Burke-Savage Tire Company?

A. Yes, I do.

Q. Mr. Savage testified in these proceedings—

Mr. Kelaher, the reference, I believe, is on page 1756 of the record—

Mr. Kelaher was questioning Mr. Savage at that 2541 point and Mr. Kelaher asked this question: "Do you recall the names of any other Atlantic dealers with whom you had conversations concerning their purchases of U.S. tires?"

And Mr. Savage said: "Yes, I called on Eckhardt Service Station, on Fleet Street. I believe his first name was Tom Eckhardt."

That would be you, would it not?

A. He believes. Yes, sir, it was.

Q. In response to a later question, Mr. Savage said: "I started calling on him approximately 1951. I sold him tires up until approximately 1954. At that time he told me he could carry only the Firestone tires. I stopped calling on him when he naturally couldn't purchase any more tires from Burke-Savage."

Did you ever tell Mr. Savage that you could carry only Firestone tires?

A. Never made a statement like that, sir.

Q. Later on, on cross-examination, Mr. Thompson asked Mr. Savage the circumstances of the conversations.

This is on page 1817 of the transcript.

Mr. Savage said this: "I had been calling on Mr. Eckhardt for many years. At the time he was instructed that Firestone is now selling Atlantic stations. He put in a complete line of Firestone tires and accessories and told me that he will not be able to stock any U.S. products."

2542 Did you ever put in a complete line of Firestone tires and accessories?

A. In no way at all. If you will check back my records, I doubt, to my knowledge, that I ever bought anything with the exception of Firestone tires that had a Firestone name on it, because I always purchased name products such as DuPont products, and the like of that. We never put any Firestone-accessories in at all.

Q. Did you ever tell Savage that you had received instructions from Atlantic on this point?

A. Never at all, sir.

Q. Did you ever tell him that you would not be able to stock any U.S. products?

A. No, sir. You know, along that line, besides handling Firestone tires I still purchased some tires from Kimmel, who was still up the street from me, and he is still there today. We didn't have a hundred percent Firestone. Be-

sides that we handled some Goodyear in there, too. If we have a customer coming in for Goodyear tires, we sell him Goodyear tires.

Mr. Ballard: I have no further questions.

I think Mr. Kelaher has some for you.

Mr. Kelaher: I think I do.

May I have a minute or two?

Hearing Examiner Koff: Yes.

2543 *Cross-Examination by Mr. Kelaher.*

Q. Mr. Eckhardt, you became an Atlantic lessee dealer in 1927, is that correct?

A. Yes, sir.

Q. Have you always operated at that same station, or did you change locations along the line?

A. No, I was in that station constantly for 18 years, with one exception. For a couple of years I had two stations. I had another at 5500 Bel Air. But I was in one of them steady.

Q. And your brother testified here today. How long was he with you as an employee?

A. That is about 12 years.

Q. Was he in your station from the middle '40s on?

A. John was away from me during the war-time. He worked for A. Gross Candle Company.

Q. When did he return to your station as an employee? Was it in the '50s sometime?

A. I can't recall the date. It may have been in the early '50s.

Q. You began to purchase U.S. Royal tires from Burke-Savage practically from the time you opened your station, as I understand your testimony; is that correct?

A. Pretty far back; yes, sir. I would say it was
2544 about pretty well when we first opened. Between
Surplus and Burke-Savage.

Q. And you continued to buy from Burke-Savage until when?

A. I can't recall what year it was. We bought from them—I didn't stop buying from them altogether.

Q. Completely?

A. No, sir, never did stop buying entirely.

Q. So you were buying from them after Atlantic began to sponsor Firestone TBA?

A. Yes, sir.

Q. Is that correct?

A. They did a lot of retreading for me, they did a lot of vulcanizing tires for us, and we bought some in between.

Q. So you did see Eugene Savage after Atlantic changed over to Firestone TBA; is that correct?

A. Yes, sir.

Q. You also purchased Lee tires, did you not?

A. Yes, sir.

Q. And what was your reason for purchasing Lee tires?

A. We had been getting an awful lot of kicks and complaints on poor workmanship on Lee tires.

Q. What was your reason for purchasing Lee tires? You said you purchased Lee tires. Prior to 1951 did you purchase Lee tires?

A. Yes, we did.

2545 Q. What was your reason?

A. What was the reason for buying Lee tires?

Q. For buying Lee tires?

A. I bought them from Charlie Johnson. He was another Atlantic dealer. Charlie always gave us a good price on tires. His price was competitive.

Q. Wasn't Charlie Johnson a part of the Atlantic set-up at that time with respect to Lee tires?

A. Yes, sir.

Q. And Exide batteries, and so on?

A. Yes.

Q. And you did purchase Lee tires. Did you purchase other products from Mr. Johnson?

A. I don't think we bought anything from Mr. Johnson, if my memory serves me right.

Q. Other than Lee tires?

A. Other than Lee tires. Wait a minute. I bought a few Exides from Charlie. It was very few. We bought practically all them from J. R. Hunt.

Q. And J. R. Hunt was part of the Atlantic set-up at that time, was he not?

A. No, sir.

Q. Was not?

A. No.

Q. He was an Exide distributor, wasn't he?

A. That's right. For years and years.

2546 Q. You began to purchase Firestone after Atlantic began to sponsor Firestone tires; is that correct?

A. No, I bought my first Firestone from Jack Spangenberg.

Q. When was that?

A. It must have been around late—no, it was the early '50s there.

Q. Did the fact that Atlantic sponsored Firestone influence you to purchase Firestone tires?

A. Atlantic in no way at all insisted on my buying certain products.

Q. I am not asking that question. I am asking if the fact that Atlantic sponsored Firestone was the reason why you purchased Firestone tires.

A. No, sir. You recall a few minutes ago I said I bought them from Jack Spangenberg, due to getting all of his business. That is how we started buying Firestone tires.

Q. And what was the approximate date when you started buying Firestone tires?

A. I can't recall what date it was.

Q. Isn't it a fact that you discontinued purchasing Lee tires when Atlantic discontinued sponsoring Lee tires?

A. No, sir, we stopped before they did.

Q. You say that the fact that Atlantic sponsored Firestone tires had no influence on your reason for carrying Firestone tires?

2547 A. No, sir.

Q. At your station did you have what are known as window decals and an outdoor sign?

A. Yes, sir.

Q. Prior to the time when Atlantic sponsored Firestone TBA, what window decals and outdoor signs did you have in your station?

A. We had Lee up there then.

Q. You had Lee?

A. Yes, sir.

Q. When Atlantic began to sponsor Firestone TBA—if you can take your memory back to that period in 1951—did you continue to have the Lee identification on your station?

A. I had Lee taken out a long time previous to that because we had stopped handling Lee tires.

Q. Did you put any identification up after you took Lee down?

A. I didn't have anything at all.

Q. After Atlantic began to sponsor Firestone TBA, did you have service station identification?

A. We did.

Q. What was that?

A. That was Firestone.

Q. Who put it there?

A. The reason was that they had seen we were
2548 handling Firestone tires, and they offered to put Firestone advertising up, and it didn't cost me anything at all, so I gave permission to do it.

Q. Did they ask your permission to do that?

A. Yes, they did.

Q. Did Burke-Savage ever ask your permission to put up US Royal signs?

A. No.

Q. Did any other brand such as Goodyear salesmen ever ask you to put a sign up?

A. No, sir.

Q. Even though you were selling other brands, the only identification you had was—

A. Stationary signs, but we would have these cardboard signs that you would put up for advertising, like you would put on a desk or nail up on the wall. We had quite a few of those. But no stationary signs on the building.

Mr. Ballard: The record isn't clear. Those cardboard signs, what brand were they?

Mr. Kelaher: Why don't you let me continue with my cross-examination?

Mr. Ballard: Excuse me.

By Mr. Kelaher:

Q. I am referring to the window decals and outdoor signs. They were put up by Atlantic?

2549 A. By Firestone.

Q. By Firestone personnel?

A. By Firestone personnel, that is right.

Q. After March 1951, did you purchase Firestone TBA or Firestone tires because you thought Atlantic expected you to purchase Firestone tires?

A. No, sir.

Q. Did you think that Atlantic had a right to expect you to carry Firestone tires?

A. I don't think they had a right to. I guess if I probably owned property like they did and I leased off of them, I might expect somebody to buy off of me the same way.

Q. So, as a matter of fact, you did think that they had a right to have you buy Firestone tires; isn't that correct?

A. But they never forced any issue on it.

Q. Wasn't that one of the reasons why you purchased Firestone TBA?

A. No, sir. The only thing we handled in Firestone was tires. I bought them from Jack Spangenberg.

Q. I understand that. But you stated on direct examination that you stocked Firestone tires.

A. That is correct.

Q. You purchased Firestone tires on a stocking basis. And you purchased Firestone tires on a stocking basis after Atlantic began to sponsor Firestone tires. Isn't that correct?

2550 A. That is correct.

Q. Do you recall being interviewed by a Federal Trade Commission attorney-examiner, Mr. Eckhardt?

A. Yes, sir.

Q. You do recall that. And do you recall the fact that he asked you a number of questions?

A. It has been a long while ago, though.

Q. That was quite a long time ago. Would it refresh your recollection if I mentioned that it was in March 1953? It was that long ago.

A. It has been a good while ago, I am sure of that.

Q. Do you remember whether he prepared a statement and asked you to read it at the time?

A. I am pretty sure I did.

Q. And you recall, I imagine, that you also signed the statement at that time?

A. Yes, sir.

Mr. Kelaher: Mr. Examiner, I ask the reporter to mark this document as Commission's Exhibit 482 for identification.

(The document referred to was marked Commission's Exhibit 482 for identification.)

(The document was handed to Mr. Ballard.)

Mr. Ballard: Will you show it to the witness and give him a chance to read it? It was written so many years ago.

2551 By Mr. Kelaher:

Q. Mr. Eckhardt, I ask you to examine Commission's Exhibit 482 for identification. Take your time to read it. I will ask you a few questions about it after you have finished reading it.

Is that your statement, Mr. Eckhardt?

A. It is down there.

Q. And is that your signature appearing on the bottom of Commission's Exhibit 482 for identification?

A. Yes, sir.

Q. I am going to read a statement appearing thereon to this effect, and I quote, under "reason for choosing line of TBA carried" this statement appears: "Used to handle Lee when Atlantic warehoused and sold directly. Then when Atlantic 'sanctioned' Firestone, purchased Firestone. Dealer felt that as long as Atlantic 'sanctioned' Firestone, he would buy Firestone. No pressure because haven't gone out of step."

That is what you told the—

A. I can't recall that.

Q. You can't recall that?

A. No, sir.

Q. That is your statement as of March 26, 1953, is it not?

Mr. Ballard: He said he can't recall.

Mr. Kelaher: I don't care whether he recalls or not.

This is what he said. I am establishing the fact that
2552 this is a signed statement.

Mr. Ballard: That is the statement that is on the piece of paper. It is what the investigator wrote down.

Mr. Witness: Anything could have been put on after that. I don't recall all of that being on there when I signed that, sir.

By Mr. Kelaher:

Q. You read it before you signed it, didn't you?

A. I read it. I can't testify to those words.

Q. You testified that you read the statement before you signed it; is that correct?

A. Yes, but I can't remember any of that being on there because I hadn't had any pressure put on me that I had to buy those tires.

Q. But the fact that Atlantic sanctioned Firestone was the reason you purchased Firestone tires, is it not?

A. I purchased them from Jack Spangenberg before we bought any from Atlantic.

Q. But then you began to stock Firestone tires, you testified here today.

A. We did stock them, yes.

Q. And that was after Atlantic sponsored Firestone tires, was it not?

A. It could have been.

Q. And the reason that no pressure was applied 2553 was because you stated to Mr. Lipsky at the time "you haven't gone out of step"?

A. I can't recall any of that because I haven't had any trouble along that line. Never did.

Q. Wasn't it also true that you thought you should buy some Firestone in order to keep Atlantic from getting angry at you? Isn't that true?

A. I could have said that, yes.

Q. The answer is yes, is it not?

A. Yes. I said I felt that in my own way, now; I didn't say that Atlantic was mad at me.

Q. That is right.

A. I said in my own way.

Q. In your own way.

A. That is right.

Mr. Kelaheer: I move the admission in evidence of Commission's Exhibit 482.

Mr. Ballard: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 482.

(Whereupon, the document referred to, heretofore marked COMMISSION'S EXHIBIT 482 for identification, was received in evidence.)

Mr. Ballard: May we have a few minutes?

Hearing Examiner Kolb: Yes.

2554 *Redirect Examination by Mr. Ballard.*

Q. Mr. Eckhardt, recalling the conversation that you had with the investigator from the Federal Trade Commission, did the investigator put down every word that you said?

Mr. Kelaheer: Objection, your Honor. I think the document speaks for itself.

Hearing Examiner Kolb: Objection overruled.

By Mr. Ballard:

Q. You may answer the question.

A. I can't recall half of that stuff that is on that paper.

Q. My question is this, sir: Did he put down every word that you said?

A. I am sure he didn't.

Q. Was it a long conversation?

A. Very much longer than is shown on this application.

Q. He chose what he wanted to put down?

Mr. Kelaheer: Objection, your Honor.

By Mr. Ballard:

Q. And you read it?

Hearing Examiner Kolb: Objection overruled.

By Mr. Ballard:

Q. Did he choose the words that he wanted to put down?

A. That is what he put down.

Q. Shortly thereafter, did you inform the Atlantic 2555 Refining Company of this incident?

A. Yes, I did.

Q. And did some representatives of the Atlantic Refining Company come and talk to you about it?

A. Yes, sir.

Q. And did you give them a statement?

A. I did.

Q. Did you sign that statement for them?

A. I did.

Mr. Ballard: I would like to have this document marked for identification as Respondent's Exhibit A-11-A through A-11-G.

(The document referred to was marked Respondent's Exhibit A-11-A through A-11-G for identification.)

(The document was handed to Mr. Kelaher.)

By Mr. Ballard:

Q. Mr. Eckhardt, I show you this document marked RX-A-11-A through A-11-G, and ask you if that is a copy of the statement that you signed very shortly after the Federal Trade Commission investigator talked to you.

As you look at that, is that a copy of what you signed?

A. Yes, sir.

Q. Does that record refresh your recollection of what you told the Atlantic Refining Company representative?

A. Yes, sir.

2556 Q. Does it all refresh your recollection of what you told the Federal Trade Commission?

A. This is more like the words I used, yes, sir.

Q. Those are more like the words that you used?

A. Yes, sir.

Mr. Ballard: I am in the same situation.

Mr. Kelaher: No objection, if you intend to offer this in evidence.

Mr. Ballard: What I would like to do, your Honor, is offer this in evidence, with the privilege of substituting the original signed one when we have it. It is in Philadelphia. With your permission, we will substitute that. And I believe it has attachments, the same attachments. And if they are attached to the original, I hope that you will permit those to be received, too.

Mr. Kelaher: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Respondent's Exhibit A-11-A through A-11-G, inclusive, subject to the right to substitute the original at a later date.

(Whereupon, the document referred to, heretofore marked RESPONDENT'S EXHIBIT A-11-A through A-11-G for identification, was received in evidence.)

By Mr. Ballard:

2557 Q. Mr. Eckhardt, I show you CX-482 and I ask you if this correctly indicates that at the time of the investigation you were carrying Firestone, US, and Goodyear tires and tubes?

A. That is correct.

Q. It also indicates that you were buying US and Goodyear from Kimmel; is that correct?

A. That is right, sir.

Q. It indicates that you were buying Firestone tires from the Firestone store. By that did you mean Jack's store, or the Firestone Company store?

A. Jack's store.

Q. At that time was Jack's store an authorized denominated supply point under the Atlantic-Firestone system?

A. No, sir.

Mr. Ballard: I have no further questions.

Recross Examination by Mr. Kelaher.

Q. I believe you testified that you continued to purchase some US tires from Burke-Savage after 1951; isn't that correct?

A. Yes, sir.

Q. So that, as of March 26, 1953, isn't there a possibility that you may have been purchasing some US tires from Burke-Savage? Or did you discontinue prior to that time?

A. I can't recall exact dates on that, sir.

Q. You can't recall?

A. No, sir.

2558 Q. So you can't recall whether your sole supplier of US tires on March 26, 1953, was C. E. Kimmel, can you?

A. I can't say that I recall that. No, sir.

Q. Do you know whether Jack's Tire Store ever became a supply point under the Firestone-Atlantic TBA program?

A. To my knowledge they never did.

Q. I am sorry to say that your knowledge isn't—

Mr. Ballard: Jim—

Mr. Kelaher: Just a minute. I would like the record to show that at our hearing on June 14, 1957, Jack's Tire Service, Baltimore, Maryland, is listed as a Firestone supply point serving dealers and distributors in the Baltimore, Maryland, district.

The Witness: But I went out of business in 1955; that is why I can't recall.

By Mr. Kelaher:

Q. So you don't know whether it became a supply point before or after you went out of business, can you? You can't truthfully say you know.

A. The records will show.

Mr. Kelaher: I move to strike all that testimony with all the interruptions, I don't know where we stand on it. Hearing Examiner Kolb. Can you answer the question?

The Witness: Yes, sir. I can.

Hearing Examiner Kolb: Go ahead.

2559 The Witness: To my knowledge, Jack never did supply for the company—I am sure he didn't—when I was in business with him in 1955.

Mr. Ballard: May I make a statement for the record?

Mr. Kelaher: Not until I am finished.

Mr. Ballard: I think you are taking very unfair advantage of this witness.

Mr. Kelaher: Taking unfair advantage? I have a right to recross. I can't understand why I can't ask him some questions. I am being rushed here at a mile a minute. I am trying to cooperate with you. I am hurrying through my notes.

Mr. Ballard: The fact is that Jack's Store did not become a supply point until 1957. I will be glad to stipulate it with you.

Mr. Kelaher: Now we know it. I didn't know it when I asked the question.

I have no further questions, but I am not willing to stipulate the last remark of counsel at this time.

Mr. Ballard: We will supply you with the evidence, if you wish.

Hearing Examiner Kolb: The hearing will adjourn to reconvene tomorrow morning in Room 532, Federal Trade Commission, at 10:00 o'clock.

2560

Room 532

Federal Trade Commission

Washington, D. C.

Wednesday, 2 July 1958

Met, pursuant to adjournment, at 10:18 a.m.

Following Testimony Taken At Washington
2561 Hearing Examiner Kolb: The hearing will come to order.

Mr. Ballard: Mr. Examiner, before I call the first witness, I would like to note for the record that, in line with your Honor's ruling of yesterday, I have sitting with me and helping me today Mr. Thomas Jones, a representative of the Atlantic Refining Company. It is quite possible Mr. Jones will be called as a witness later in the proceeding. Mr. Kelaher tells me he has no objection to Mr. Jones assisting me today.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Ballard: I will call as my first witness Mr. Norman Landis.

NORMAN LANDIS was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Ballard.

Q. Mr. Landis, would you state your full name for the record?

A. Norman Landis.

Q. Would you give us your home address?

2562 A. 114 Landers Lane, Swenwyck Gardens, New Castle, Delaware.

Q. Mr. Landis, what is the location of your Atlantic station?

A. It is located in Rose Hill, New Castle Avenue and Lambson Lane, New Castle.

Q. And are you the lessee of that station?

A. That is right.

Q. How long have you been a lessee at that station?

A. I took over the station on September 15, 1954.

Q. Is your present lease at that station a three-year lease?

A. It is, sir.

Q. Prior to leasing that station from the Atlantic Refining Company, did you lease another station from another oil company?

A. Yes. I leased a station from the American Oil Company.

Q. Where was that located?

A. Fourth and Walnut Streets, Wilmington.

Q. What were the dates that you were in that station?

A. 1944 to '52.

Q. Mr. Landis, what kind of tires do you carry at your present station?

A. Firestone and Lee.

Q. Could you give us an approximate breakdown as to which, between Firestone and Lee?

A. I sell about 75 percent Lee, perhaps a little over that, and about 25 Firestone.

2563 Q. On batteries, what brand of batteries do you carry?

A. I carry Firestone batteries and Lee.

Q. Could you give us the breakdown on those?

A. Well, I sell—I would say it was the reverse on batteries—I sell 75 percent Firestone and maybe 25 percent Lee, or maybe a little less Lee.

Q. On accessories—and in this proceeding we define

"accessories" as not including repair parts, what are sometimes called hard parts. We include polishes, waxes, chemicals, hoses, fan belts, things of that nature. Where do you buy your accessories?

A. I buy most of my accessories from Duromotive, at Third and Washington.

Q. Is that D-u-r-o-m-o-t-i-v-e?

A. That is right.

Q. Do you have any other source of supply for accessories?

A. Yes. I buy some from Motor Car Service.

Q. Where are they located?

A. Ninth and French Streets.

Q. That is in Wilmington?

A. Yes.

Q. And Duromotive is in Wilmington?

A. Yes, on Washington Street, between Third and Fourth.

Q. Do you have any other source of supply?

A. From Wilco I buy antifreeze. They have Zerex and Zerone.

2564 Q. Is that W-i-l-c-o?

A. That is right.

Q. And that is in Wilmington, too?

A. Yes, sir.

Q. Do you have any other places you trade for accessories?

A. There are places I call, but I very seldom buy. There is Suburban Auto Parts; I don't buy much from them. And Adams Parts; they call once in a while on me. But the two that I mentioned, they get—in Firestone I deal with them; I get some things off of them in the accessories line. But outside of those three, they get the bulk of it.

Q. Do you carry Champion spark plugs?

A. Yes, sir. That is the only spark plug I sell.

Q. Do you have a Champion decal in your window?

A. I have two of them on there, one in the front and one on the side window.

Q. Do you have one of those Champion spark plug cleaners?

A. I have.

Q. With the name "Champion" on it?

A. Yes, sir.

Q. What kind of filter cartridge do you carry?

A. I carry Fram and I took over a new line. Well, not a new line, but I took over Hastings in the last month.

Q. Has Hastings given you a display rack?

A. They have.

2565 Q. Does that have the Hastings name on it?

A. Yes, sir.

Q. Does Lee provide you with tire stands for their tires?

A. Yes, sir.

Q. Those are the little stands that the tire—

A. That the tire sets in. They do. And inserts, also, that go in the tire when they are setting in them.

Q. These Lee tires and Lee tire stands and the Hastings filters, are they displayed in your station?

A. Yes, sir.

Q. Visible for anyone to see?

A. Anyone can see them.

Q. Does your Atlantic salesman see them?

A. Yes. He couldn't help.

Q. Does he discuss them with you?

A. He has never criticized me for handling Lee tires.

Q. Did he ever try to persuade you that the Firestone filter was a better filter than Hastings?

A. Never has.

Q. Do you sell all these things on Atlantic credit cards?

A. I sell anything in the TBA line—tires, batteries and accessories—on the Atlantic credit card.

2566 Q. Has your Atlantic salesman ever criticized you for selling Lee tires on Atlantic credit cards?

A. No one has ever said anything to me about it.

Q. When you are deciding what TBA items to buy, what is the most important—what are the most important things that you take into account in your own mind?

A. Price and what kind of a dealer setup you can have. What I mean by the dealer set up is, in a lot of cases, if you buy 24, you can get it quite a bit cheaper. But I am interested in the deal that if I need to replace one item, if I can get it at that 24-price by buying a certain quantity at the beginning.

Q. Speaking of TBA items, do you feel free to buy any TBA items you want?

A. Yes, sir.

Q. Do you feel free to buy TBA from any source you want?

A. Yes, sir.

Q. Did anyone from Atlantic ever tell you that you had to buy Firestone TBA?

A. No one has ever told me that.

Q. Mr. Landis, I show you a document which you will see is marked CX-207, a letter or form of letter dated June 24, 1955, addressed to Atlantic dealers. This particular copy is signed by Mr. Estlow who is the manager of the Philadelphia-New Jersey region. But, of course, if you had received one it would have been signed by 2567 the manager of your region.

I ask you to look at that letter and tell me if you ever received such a letter.

A. I have seen a letter like that, but nobody ever told me I had to buy any place, any particular place.

Mr. Kelaher: That wasn't the question. Didn't you ask him if he received the letter?

By Mr. Ballard:

Q. I asked you, did you receive such a letter from Atlantic? Did they send you a letter like this?

A. They never sent me a letter like that, that I can recall of.

Q. Mr. Landis, who is your Atlantic salesman?

A. Jordan—William Jordan.

Q. How often does he call at your station?

A. I see him every week. Sometimes maybe it is oftener he comes around.

Q. Do you find that he is helpful to you in matters of TBA?

A. Yes.

Q. Does he suggest to you TBA promotions?

A. Yes.

Q. Does he ever point out a TBA deal to you?

A. Yes, sir.

Q. Of course that would be a Firestone deal, wouldn't it?

A. It would be a Firestone deal.

2568 Q. When he points out a good Firestone deal, do you sometimes take it?

A. I do.

Q. Your lease has been renewed several times, has it not?

A. Yes, it has. When I went in in 1954, it was from the 15th to the 15th—a year. Then I think the following year, when the year was up, they renewed it again. But then they started to lease from year to year, from the first of January to the last of December. Prior to that they gave me a three year lease.

Q. You mean after that?

A. After that. That's right.

Q. At the time that that happened, was there any discussion about your buying Lee TBA?

A. No. They never discussed anything about that to me.

Q. Mr. Landis, do you have any customers who are your own personal credit customers as distinguished from Atlantic credit-card holders?

A. Yes, sir.

Q. Do you have any idea about how many?

A. I would say offhand, 15 or 25.

Q. Those are people to whom you sell on your own credit?

A. On my own terms, on my own credit. Personal credit, as I call it.

Q. Thinking of the area around your station, are 2569 there other oil company stations in the immediate area?

A. Yes. There is an Esso to the north of me; and then to the south, there is the Sun; American Oil Company Amoco, they call it; and down from that is another Esso; and then an Atlantic and a Gulf.

Q. Have any of these companies ever approached you to lease a station from them?

A. Yes, sir.

Q. Do you remember any ones particularly?

A. Yes.

Q. Could you name them for us?

A. Tydol, which is not the nearest station to me. They wanted me to take a station. Gulf, and Esso was there once.

Q. If you took a station, a near-by station with one of those companies, do you think you could take your personal credit customers with you?

Mr. Kelaher: Objection, your Honor. This is speculative.

Hearing Examiner Kolb: Objection overruled.

By Mr. Ballard:

Q. Do you think you could take your personal credit customers with you?

A. I would say within a mile or two I could take nearly all of my personal credit with me.

Q. How much of your total business do you think 2570 you could take with you?

A. I would say 30 to 35 percent.

Q. Mr. Landis, in 1956 do you recall an investigator from the Federal Trade Commission getting in touch with you?

A. Yes. He called on the phone.

Q. And do you remember what you told him?

A. Yes.

Q. Would you tell us what you told him?

A. He asked me if the Company made me buy from any certain source, and I told him they didn't, that I could buy wherever I wanted to. And I did. And they never said anything to me.

And he said, "Well, I guess you are not my boy."

Q. Did you ever see him again?

A. I have not.

Q. Did you ever hear from him again?

A. I haven't.

Q. Mr. Landis, does not the Atlantic salesman try to persuade you that the Firestone line is a good line, and you ought to buy more of it?

A. Well, they tell us that the Firestone is a good line, which it is. I think their tires is tops. But when you are in a small—when you have a small business and operate a small business you have to consider the price that you pay for the product and meet the competitive price. Therefore, speaking of tires, I can buy Lee tires cheaper 2571 than I can buy Firestone. That is why the large percentage of tires that I sell are Firestone—are Lee tires.

Mr. Ballard: Mr. Landis, I don't think that I have any more questions for you. But I think Mr. Kelaher has some questions for you.

Mr. Kelaher: Mr. Examiner, I am going to have to ask for a short recess to check some of our files.

Hearing Examiner Kolb: All right.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Kelaher.

Q. Mr. Landis, you testified on direct examination that you were called by a Federal Trade Commission investigator?

A. That's right.

Q. By 'phone in 1956?

A. That is correct.

Q. Did the FTC investigator identify himself in any way?

A. He said he was investigating, what I understood he was a Federal investigator.

Q. That is what you understood?

A. Yes, sir.

Q. Did he identify himself in any way to you over 2572 the 'phone?

A. Well, he did say that he was investigating the stations for the buying, and if you were pressured into selling. And he asked me who I bought from and if I bought from Firestone. I told him I bought from whoever I wanted to.

Q. Did he give you his name?

A. No, he did not give the name.

Q. He did not give the name. Anyone could have called you and asked you the same question, couldn't they?

A. Well, yes, they could have. But in this case I don't

think it was because I know the fellow that called up. He called from his station.

Q. You know the fellow that called up?

A. I don't know the fellow that called up, but I do know the station that he called from.

Q. Where is the station that he called from?

A. It is on Lancaster Avenue, Stein's Atlantic Station that he called from.

Q. And you have no identification at all from this man?

A. No.

Q. There was no way you had of knowing whether he was an FTC investigator or not, isn't that correct?

A. I do know this, when Stein called up he told me that there was a fellow who was investigating, an investigator, and he wanted to talk to me, and the fellow, when he 2573 got on the 'phone, he told me what he was and where

I bought, and I told him I bought from whatever sources I wanted to, and that is why I say he was a Federal investigator.

Q. So you must took his word for it that he was an investigator?

A. Yes. But I don't think this other operator would have said he was an investigator if he hadn't been.

Q. Mr. Landis, do you have a Firestone outdoor sign on your station?

A. Yes. There is one in the window and I have tires stands.

Q. Do you have a Firestone sign on the pole outside your station?

A. No.

Q. I thought you just said Yes?

A. I have tire stands that are outside, with tires set in. And also the—

Q. Are they Firestone?

A. Yes, sir.

Q. They are Firestone?

A. Yes, sir. They are Firestone.

Q. Do you have Firestone window decals?

A. I have, sir.

Q. A big Firestone display on your window?

A. That's right.

Q. When you moved into the station, was that
2574 Firestone identification on your station?

A. They put a new one on. Whether it was or not,
I don't know. I wouldn't like to commit myself.

Q. Who put it on?

A. The salesman for Firestone, Walker, I think was his
name. Mr. Walker.

Q. Did he just come in and put the signs up?

A. I was there quite a while before he put them up.

Q. Before he put them up?

A. Yes, sir.

Q. Was that more or less automatic? In other words,
he came in and just—

A. No, I asked for them because the decals that were
on were bad, and it does a station justice when you have
nice decals and it is trimmed up nice.

Q. You are talking about new decals?

A. Yes.

Q. But the old decals were Firestone, too. Did you have
Firestone identification?

A. I don't know if they were or not. Truthfully, I could
not answer that question.

Q. Chances are that they were Firestone, isn't that
true?

A. Yes, the chances are they were. They were tied up
with the Firestone.

Q. You knew that Atlantic was tied up with Fire-
stone—

2575 A. Oh, yes.

Q. —TBA?

A. That's right.

Q. So it was only natural that your station would be identified with Firestone TBA, is that correct?

A. That's right.

Mr. Kelaher: No further questions.

Mr. Ballard: I have no further questions.

Hearing Examiner Kolb: That is all, Mr. Landis. Thank you very much.

(Witness excused.)

Mr. Ballard: Your Honor, there is no objection to the man sitting in the room after he has testified?

Hearing Examiner Kolb: No.

Mr. Ballard: Your Honor, may we have a short recess while I talk to the next witness?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Ballard: I will call Mr. Nicholas Tavani.

2576 NICHOLAS V. TAVANI, was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Ballard.

Q. Mr. Tavani, will you give your full name and home address to the reporter?

A. Nicholas V. Tavani, 1529 Barley Mill Road, Wilmington, Delaware.

Q. What is the address of your Atlantic station?

A. Southeast corner of Fourth and Young, Wilmington, Delaware.

Q. You are the lessee of that station?

A. Yes, sir.

Q. How long have you been the lessee of that station?

A. Since May of 1939.

Q. Your present lease has a term of three years?

A. Yes.

2577 Q. Going back to the period before 1950, can you remember the brand of tires that you carried at that station?

A. Lee.

Q. Where did you buy those Lee tires?

A. Some from Atlantic and some from Lee Tire and Rubber Company.

Q. What brand of batteries did you carry?

A. Exide.

Q. Where did you buy those?

A. Some from Atlantic, and some from Motor Car Service, in Wilmington.

Q. In the year 1950 do you remember that Atlantic stopped selling Lee tires and Exide batteries and began to sponsor the Firestone brand?

A. Yes.

Q. Do you remember meetings or a meeting, a dealers' meeting, at which that program was introduced?

A. I remember one meeting at the Hotel DuPont that I went to.

Q. Do you remember who was present at that meeting?

A. There were a lot of Firestone executives, some Atlantic.

Q. Were they introduced to you at that—

A. Yes.

Q. Was the plan explained to you at that meeting?

A. Yes, it was.

Q. I show you, sir, a document which is marked CX-150.

It is a form of a letter from Dwight T. Colley, 2578 Vice President of the Atlantic Refining Company. It is dated March 1, 1951. I ask you if you remember receiving such a letter?

A. Yes, I do.

Q. Now I show you another letter marked CX-206, likewise from Dwight Colley, and dated August 28, 1952, and ask you if you remember receiving that letter?

A. Yes, I do.

Q. Or a letter in that form?

A. Yes.

Q. Mr. Tavani, what brand of tires do you carry in your station today?

A. I carry about 95 percent Lee tires.

Q. Has that been true since 1950?

A. Yes, sir.

Q. And where do you buy them today?

A. Lee Tire and Rubber Company.

Q. And what batteries do you carry?

A. Exide.

Q. Would that be one hundred percent Exide?

A. One hundred percent.

Q. And where do you buy those?

A. Motor Car Service.

Q. They are the same people that you bought batteries from—

A. Yes.

2579 Q. —in the beginning.

What brands of accessories do you carry?

A. Well, I carry almost all kinds of polishes and different accessories. Whatever hits the market at the time, or hits my fancy.

Q. Where do you buy most of your accessories?

A. Different jobbers in Wilmington.

Q. Could you name some of them?

A. Motor Car, Taylor Auto, Wilco, Adams; that is about it.

Q. Does a distributor named Auto Parts and Radiator Company ever call on you?

A. Auto Parts and Radiator Company?

Q. Yes.

A. I don't think so.

Q. Does the Keil Company ever call on you?

A. Oh, yes. They have called on me before, Keil.

Q. Do you buy from them?

A. Occasionally I do.

Q. These various brands of accessories that you mentioned, do you put those on the shelves of your office?

A. Yes, I do.

Q. They are right back of your desk there?

A. Yes.

Q. Are they in plain sight?

A. Yes, they are.

2580 Q. Visible to Atlantic salesmen?

A. The office is very small. They are visible to anyone.

Q. Do you sell them on Atlantic credit cards?

A. Yes, I do.

Q. Anybody from Atlantic ever criticize you for displaying those?

A. No, not that I can remember.

Q. Did they ever criticize you for selling them on credit cards?

A. No.

Q. Did they ever tell you that you had to buy Firestone TBA?

A. No, they didn't.

Q. Do you, in fact, feel free to buy any TBA you want?

A. Yes, I do.

Q. Do you, in fact, buy any TBA you want?

A. I do.

Q. Do you sell your Lee tires and Exide batteries on credit cards?

A. Yes.

Q. Have you been criticized for that?

A. No.

Q. I show you another document marked CX-207 addressed to "All Atlantic Dealers." It is a form letter. This one happens to be signed by the manager of another district. If you had received one it would have been signed by the manager of your district. I ask you if you 2581 recall receiving that?

A. Yes, I do.

Q. A letter in that form?

Mr. Kelaher: What was the name of the manager of his district at the time?

By Mr. Ballard:

Q. Do you know the name of the manager of your district?

A. Mr. Zinn. No, he was down here in '55.

Q. Excuse me. This isn't the district. This is the region. I mis-spoke. It is the manager of the region. Mr. Zinn is the manager of his district. This was signed by the regional manager.

Mr. Kelaher: I have no objection to him showing a letter if he identifies the sender. Is this a form letter?

Mr. Ballard: This is a form letter. It is the one you put in evidence. It happens to be an estlow copy. If you wish, in the future—

Mr. Kelaher: I think we should have the name of the man who signed it.

By Mr. Ballard:

Q. Is M. G. Davis the name of the manager of your region?

A. That is right. I met him shortly after that.

Q. In the course of your operation of that station, your lease has been renewed many times, hasn't it?

A. Yes.

2582 Q. On the occasion of renewing your lease, has Atlantic ever discussed your purchases of non-sponsored TBA?

A. No.

Q. Over the years have you built up a number of personal credit customers at that station?

A. Yes, I have.

Q. About how many accounts do you have?

A. Approximately about 175.

Q. Are there other oil company stations in the area around your station?

A. Yes.

Q. Could you name a few of them?

A. There is Standard, Sun, Gulf.

Q. Standard is the Esso brand?

A. Yes.

Q. Have any of those companies ever indicated to you that they would be glad to have you for a lessee?

A. Yes, they have.

Q. If you went as a lessee to one of those nearby stations do you think you could take your personal credit customers with you?

A. I like to think I can. I don't know whether I could or not.

2583 By Mr. Ballard:

Q. About how much of your gallonage is repeat customers?

A. About 85 to 90 percent.

Q. As distinguished from one-stop, transient customers?

A. About 85 to 90 percent.

Q. Are you personally acquainted with most of those customers?

A. Yes, I am.

Q. You know them by name?

A. Yes.

Q. Do they know you by name?

A. Yes.

By Mr. Ballard:

Q. Mr. Tavani, do you recall in 1956 a visit from a gentleman who identified himself as an investigator 2584 for the Federal Trade Commission?

A. Yes.

Q. Did he show you his credentials?

A. Yes, he did.

Q. He came to your station, did he?

A. Yes.

Q. Do you happen to remember his name?

A. I think his name was Brady.

Q. Do you recall what he said to you and what you said to him?

A. Well—

Q. In a general way.

A. He asked me some questions and I answered him by letting him look around. He asked me if I was forced to buy certain things and I told him I bought what I could sell and what I felt like buying—not I could sell.

Q. Did he make notes of what you told him?

A. That I don't know.

Mr. Ballard: I have no further questions. I think Mr. Kelaher may have some questions.

Cross Examination by Mr. Kelaher.

Q. Mr. Tavani, you were just asked about a visit by an attorney-examiner from the Federal Trade Commission in 1956. You stated his name was Mr. Brady. You were also asked to give the substance of your conversation 2585 with him. I would like you to state fully what you told him?

A. He asked me if I was forced to buy certain Firestone items and tires, and I told him that I wasn't, and I told him I bought Lee tires. We spoke for about a half an hour about different things. He asked me other questions about accessories and stuff pertaining to that. I explained to him that I bought pretty much as I pleased.

Q. And that is all you remember of the conversation; is that correct?

A. He asked me if I would like to be a witness, and I told him that I wouldn't be much of a witness for the government.

Q. Do you remember anything else about the conversation?

A. He asked me where there were some more Atlantic dealers and I told him.

Q. Of course, there are Atlantic dealers all over Wilmington. He must have asked you more than that, didn't he?

A. He didn't ask me much. Well, it has been a pretty good while back.

Q. You seem to remember the other things pretty well. I want to get the entire conversation, to the best of your knowledge.

A. Well, let's see.

He come in and showed me his credentials. He asked me different questions about Firestone and the program, 2586 and I explained to him as well as I could how the

program worked. He asked me if we were forced to to buy it, and I told him that my place is very small—it is not very big—and all my accessories are displayed right in the office. So I told him, by looking up on the shelf, that I bought pretty much as I pleased. So he agreed with me.

Q. You say he asked you nothing else at that time?

A. Well, he asked me a few other questions.

Q. Let's hear what the few other questions were.

A. That is what I am trying to think of.

He asked me about antifreeze, if I bought my antifreeze from Atlantic, and I told him I didn't.

Q. You seem to be a bit hazy, so I will ask you a few questions.

Didn't he ask you if Atlantic was applying pressure to Atlantic lessee dealers to carry Firestone TBA?

A. Yes, he did.

Q. And didn't you refer him to an Atlantic lessee dealer whom you thought was having such difficulties?

A. Yes, I did.

Q. Yes, you did. And who was that man?

A. Norris Stein.

Q. That is right. That is the first we have heard of that conversation. So you did know that Atlantic—you had heard, had you not, that Atlantic was applying pressure?

2587 A. I told him that Mr. Stein was having trouble with Atlantic. I didn't tell him that he was having trouble on account of being forced to buy Firestone.

Q. The reason you sent him to Mr. Stein was because you thought he was having trouble concerning the fact that—

A. That's right.

Q. —concerning Firestone TBA; is that correct?

A. That is correct.

Q. So you did know that there were dealers in Wilming-

ton who were having pressure applied to them by Atlantic with respect to Firestone TBA; isn't that correct?

A. That is possible.

Q. The answer is Yes, isn't it?

A. Yes. Well, I mean I have trouble renewing my lease sometimes on a minimum. I mean he may have been having trouble some other way. I mean I have no way of knowing. That was purely speculation on my part.

Q. Of course, Mr. Brady was in there inquiring about the Atlantic-Firestone setup, so you sent him to Mr. Stein with that thought in mind.

A. Correct.

Q. Is that correct?

A. Correct.

Q. You stated that you have a very small station; is that correct?

2588 A. Yes.

Q. And you maintain your TBA stock where?

A. Right in the main office.

Q. In the main office?

A. In the main office.

Q. Is the main office small?

A. Very small.

Q. Is that where you maintain your tire stock and battery stock?

A. No. We have—the battery stock I maintain in a room behind the office. And the tires are in the lube room alongside the office.

Q. So actually your battery stock is, you say, in the lube room behind the office?

A. No. It is in the—sort of like a—I guess it would be another little back room like a storage room.

Q. So your Exide batteries are kept in a back room; is that correct?

A. But they are plainly visible.

Q. How would they be visible if they are in back of the office? I am not quite clear on your description of your premises.

A. It is hard to explain because the office is so small. When you walk in you can walk out of it very fast.

Q. Yes, but when you walk into the office you may
2589 see some accessories, but you don't see any batteries
in there, do you?

A. Well, at the time Mr. Brady was there the batteries were right alongside of the door to go into the back door. We have a rack where we keep the trickle charger on it that keeps the batteries fully charged. And the stock we keep under a bench in the back room.

Q. The stock is under a bench. So it is out of view. If it is under a bench in the back room it seems to me it is out of view.

A. The eight batteries sit in clear view right in the front of the office there.

Q. That was at that time, you say?

A. Yes.

Q. But today they are not out there?

A. No.

Q. They are in a back room under a bench, aren't they?

A. Well, I occasionally take them out and—it is purely merchandising, because the batteries now come dry-charged and I can stack them in a—

Q. You led us to believe they were on open display—

Mr. Ballard: I object to that characterization. If you will check the record you will not find that he led you to believe any such thing.

Mr. Kelaher: I was certainly under that impression.

2590 You asked him about his displays.

Mr. Ballard: I did. You can check the record if you want to make that accusation.

Hearing Examiner Kolb: Let's not argue. Proceed.

Mr. Kelaher: I am happy to hear counsel's statement because it just confirms the witness' testimony.

By Mr. Kelaher:

Q. Do you have any window decals in your station?

A. No.

Q. No window decals?

A. No.

Q. And you have no outdoor sign, do you?

A. I think I have one outdoor sign. It is a brake sign.

Q. You have no Lee sign out there, no big—

A. No. I have no Firestone sign, either.

Q. And no Firestone sign?

A. No.

Q. At one time did you have a big Lee sign out there?

A. Yes.

Q. What happened to that?

A. Well, they since put new glass in, and I never replaced it.

Q. When was that, about?

A. The Lee sign has been down a long time. I didn't replace them when they were first taken down.

2591 Q. When they were first taken down? Who took them down the first time?

A. I took them down.

Q. Were they taken down about the time Atlantic switched over to the Firestone plan?

A. I don't think so. It wasn't done for that reason. Like I say, the station is very small. Any sign would block the light in the office. That was the reason for taking them down.

Q. You have no identification on your station to the effect that you sell Lee tires or Exide batteries; is that correct?

A. That is correct.

Mr. Kelaher: No further questions.

Redirect Examination by Mr. Ballard.

Q. Mr. Tavani, did anyone from the Atlantic Refining Company tell you to put those batteries in your stock storage room?

A. No. The only reason I put them in the stock room is because I started to handle dry-charge batteries and I can stack them much easier, and the others had to be constantly maintained on the charger, to be kept alive, or they would just die sitting in stock.

Mr. Ballard: I have no further questions.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all, Mr. Tavani.
2592 Thank you very much.

(Witness excused.)

Mr. Ballard: May we have another brief recess, your Honor?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

2593 Hearing Examiner Kolb: The hearing will come to order.

Mr. Gordon: Mr. Foster?

GEORGE F. FOSTER was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Gordon.

Q. Mr. Foster, will you give your name to the reporter?

A. George F. Foster.

Q. And your home address?

A. 518 Springer Street, Wilmington, Delaware.

Q. You are a lessee of an Atlantic station?

A. That's right.

Q. Where is that station located?

A. Pennsylvania Avenue and Clayton Street—1603 Pennsylvania Avenue is the street address.

Q. When did you first become associated with that station?

A. In 1945, in partnership with Albert Elleni.

Q. And you and your partner leased that station until when?

A. Until 1956, when the partnership was dissolved.

Q. And you did what?

A. I took over the station myself.

Q. And you are still leasing it?

2594 A. That's right.

Q. What is the term of your lease?

A. One year.

Q. Do you know where your partner went?

A. Yes. He is also an Atlantic dealer today.

Q. Before you were an Atlantic dealer, what did you do?

A. I had a Cities Service Station.

Q. Where was that located?

A. 616 North Union Street.

Q. In Wilmington?

A. In Wilmington.

Q. About how far away from your present station is that?

A. Approximately a mile.

Q. Do you recall, Mr. Foster, approximately when Atlantic took on the Firestone program?

A. Approximately 1950.

Q. Before they did that, did you have any conversation with Atlantic about the Firestone program?

A. An Atlantic salesman wanted to know if we would accept a program for taking on Firestone TBA.

Mr. Kelaher: Your Honor, I am going to object to conversation unless we can name the salesman and the approximate time of the conversation with the salesman. I think we should have identification of the conversation.

Mr. Gordon: I think we can do that.

2595 Hearing Examiner Kolb: Bring that out, please.

By Mr. Gordon:

Q. Do you know approximately when this conversation was?

A. It was in early 1950.

Q. Do you know where it was?

A. It was right at the station location.

Q. And who talked to you about the Firestone program?

A. The Firestone program was talked to us at that time by the salesman. His name was James Robinson.

Q. What did they tell you, and ask you?

A. They said they were going to, if possible, take over this line, the Firestone line for the dealers. It was a voluntary proposition and they asked us to investigate it.

Q. What did you tell them?

A. We told them we would be glad to do so.

Q. Did you tell them anything else?

A. We would be glad to do so for the reason we weren't satisfied with the tire setup that we had with Lee because they were under-selling us in the open market.

Q. Did you tell them that you liked the Firestone line?

A. We hadn't had very much experience with it, but what we had was satisfactory.

Q. Mr. Foster,—

Mr. Kelaher: Was that a part of the conversation? I am not sure I got that. Was that part of his conversation with the salesman?

By Mr. Gordon:

Q. Was that part of your conversation with the salesman, the Atlantic representative?

A. No, when they asked us, at the time they approached us at first, we told them we would be glad to try it on account of the fact that Lee was under-selling us in open market.

Q. I show you this letter which is marked at the top, CX-150. It is a letter dated March 1, 1951. It has Mr. Colley's name in the corner; it is a "Statement of Atlantic's TBA Policy." Can you identify the fact that you received that letter?

A. Yes, sir. It was received.

Q. I also show you this letter which has CX-206 at the top, and is dated August 28, 1952, also from Mr. Colley. Can you say that you received that letter?

A. That's right. That was received.

Q. I also show you this letter which is dated June 24, 1955, and has CX-207 at the top, which was sent to you from Mr. Davis, Regional Manager. "No Forcing" is the subject.

A. That was received.

Q. Do you recall, Mr. Foster, whether meetings were held at the time Atlantic took on the Firestone program?

A. After the program was taken on there was a meeting held by the dealers, but I didn't attend it myself.

2597 By Mr. Gordon:

Q. Was it or was it not made clear to you that the Firestone program would be voluntary?

A. It was made clear at the very beginning.

Q. Would you tell me, Mr. Foster, what tires and batteries you are now carrying?

A. Tires and batteries? Firestone, 100 percent.

Q. And where do you buy your accessories?

A. My accessories are bought wherever I feel like it.

Q. About what portion are bought from Firestone and what portion from other sources?

A. Outside of batteries and tires and accessories, I would say about 25 percent from Firestone and the balance is divided with other suppliers.

Q. Where do you purchase your recaps?

A. Recaps? What little recap business I do is with Hassler Tire Company, Salem, New Jersey.

2598 Q. What sort of fan belts do you carry?

A. Gates.

Q. And filters?

A. Filters; I handle Walker and AC.

Q. What sort of spark plugs?

A. I handle spark plugs to manufacturer's requirements. I handle AC, Champion, and Autolite.

Q. Has Atlantic ever criticized you for carrying accessories that Firestone does not sell?

A. They have never criticized me in any way; manner, shape or form.

Q. Are the accessories that you have mentioned clearly visible?

A. Right on my display shelves.

Q. Do you sell any TBA that you carry on Atlantic credit cards?

A. Yes, indeed.

Q. Does Adams Parts Company solicit your TBA business?

A. No.

Q. Does Auto Parts and Radiator Company solicit you?

A. No. They never solicit.

Q. Does the Keil Company solicit your business?

A. No.

Q. Does Taylor Auto Supply solicit your business?

A. I have been dealing with them for about 25 years.

2599 Q. Does Motor Parts and Service?

A. They do.

Q. And you buy from them?

A. That's right.

Q. Would you tell me why you buy the Firestone tire?

A. I think Firestone gives you the better value and it gives you an equally as good profit.

Q. Do you like its public acceptance?

A. That's right.

Q. Can you make a profit on it?

A. Yes, indeed. If I wouldn't, I wouldn't sell it.

Q. Do you feel free to buy any TBA you want?

A. Yes, sir.

Q. Do you feel free to buy TBA from any source you want?

A. I always have.

Q. Do you think that Atlantic would cancel your lease if you didn't buy Firestone TBA?

A. No, sir.

Q. Did anyone from Atlantic ever tell you that you had to buy Firestone TBA?

A. Never.

Q. Have you ever been forced or pressured to buy Firestone?

A. No, sir.

Q. Having been in an Atlantic station since approximately 1945, you have had several leases renewed, is that not right?

2600 A. That's right.

Q. At the time those leases were renewed was TBA ever discussed?

A. Never.

Q. Mr. Foster, you were a Cities Service lessee before you went with Atlantic?

A. I wasn't, a lessee of Cities Service. I handled Cities Service products. I had the station—the station was from an outside source, where the owner was from an outside source, but I handled Cities Service products.

Q. Did you have any personal credit customers when you were with that Company?

A. Oh, yes.

Mr. Kelaher: Your Honor, I am going to object to his operation of a Cities Service station. I don't see the relevancy of that to this particular proceeding.

Hearing Examiner Kolb: That is probably too remote to this.

Mr. Gordon: I believe subsequent questions, your Honor, will make the subject relevant.

Hearing Examiner Kolb: All right. You may proceed.

By Mr. Gordon:

Q. When you then became an Atlantic lessee, did any of your personal credit customers come with you?

A. Yes. Many of them.

2601 Q. What portion would you say?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Objection overruled.

By Mr. Gordon:

Q. You may answer.

A. About 75 percent.

Q. Are any of those with you today?

A. I have one man who has been with me for 23 years.

Q. And you have others?

A. Others are still there. But he is the oldest one.

Q. Are there many oil companies active in your area?

A. Yes, there are.

Q. Can you name some of those?

A. Yes, I can. There is Mobile, Texaco, Tydol, Sun, Standard.

Q. Mr. Foster, in past years, have any of those companies or other companies asked you to take stations?

A. I have been approached in the past, yes.

Q. Is it true or isn't it true that qualified service station dealers are in demand?

A. They are.

Q. Do you recall in 1956, Mr. Foster, an investigator from the Federal Trade Commission talking to you in your station?

A. He came to the station. My partner did the talking.

I didn't have anything to say. I know he was there.

2602 Mr. Gordon: I don't have any more questions.
Perhaps Mr. Kelaher does.

Cross-Examination by Mr. Kelaher.

Q. Mr. Foster, prior to Atlantic's sponsorship of Firestone TBA, you were handling Lee tires and Exide batteries; is that correct?

A. That is correct.

Q. And also the accessories in the Atlantic TBA program at that time? ..

A. No, not too many. We still had the outside sources.

Q. You still had some?

A. That's right. Our outside sources were the main TBA.

Q. After the change-over to Firestone you began to handle Firestone tires and batteries 100 percent; is that correct?

A. That's right.

Q. And were you also dissatisfied with Exide batteries? Was that the reason you changed?

A. Well, Exide batteries, to me there wasn't very much difference on that because it was my belief and knowledge that I handled Willard and Exide, and Firestone batteries were made by Willard. For that reason I had no qualms to changing over.

Q. As long as Atlantic wanted Firestone you went along with them on batteries, is that correct?

2603 A. Not particularly with Firestone, that Atlantic wanted it.

Q. No, but because Firestone was in the—

A. In the program, that's right. In other words, I knew I had a quality article.

Q. Right. And you went along with the program, of course?

A. That's right.

Q. You also have the Firestone identification on your station, I presume?

A. I have a decal in the window.

Q. And of course that was put there by Firestone or Atlantic, was it not?

A. Firestone.

Q. Firestone personnel?

A. That's right.

Q. They came out?

A. That's right.

Q. And put it up?

A. That's right.

Q. Did you have any decal there before that?

A. No, none before. I had Lee before that. It was Lee.

Q. Lee, of course, was taken down?

A. That's right.

Q. And Firestone went up?

A. That's right.

Mr. Kelaher: No further questions.

2604 Mr. Gordon: No further questions.

Hearing Examiner Kolb: That is all, Mr. Foster.
Thank you very much.

(Witness excused.)

Mr. Ballard: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: The hearing will be in order.

ALBERT ELLENI, was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Ballard.

Q. Mr. Elleni, will you spell your name for the reporter?

A. Albert Elleni—E-l-l-e-n-i.

Q. And would you give him your home address, please?

A. 1006 Gallery Road, Woodland Heights, Wilmington 5, Delaware.

Q. Mr. Elleni, you were for a period of about ten years the lessee of an Atlantic service station at Pennsylvania and Clayton Avenues in Wilmington, in partnership with Mr. Foster; is that correct?

A. That's right.

2605 Q. And that is the Mr. Foster who just preceded you into the hearing here?

A. That's right.

Q. From 1957 to the present, you have been on your own as an Atlantic lessee?

A. Yes, sir.

Q. Where is your present station located?

A. 301 Philadelphia Pike, Wilmington 3, Delaware.

Q. When you first came with Atlantic in 1946, that was the post-war period, was it not?

A. That's right.

Q. Were tires at that time in short supply?

A. Yes, sir.

Q. What tires did you buy for your station at that time?

A. Lee tires.

Q. Did you get them through the Atlantic Refining Company?

A. Yes, sir.

Q. Did Atlantic Refining Company have an adequate supply of them?

A. Fairly adequate, considering the shortness of supply at that time.

Q. Were other brands more difficult for you to get?

A. Yes, sir.

Q. In the early part of 1950, were you visited by some representatives of the Atlantic Refining Company 2606 and the Firestone Tire and Rubber Company?

A. Yes, I was.

Q. Do you remember the names of the people from Atlantic?

A. I do remember George Fearn and Clyde Muma.

Q. I believe the spelling on Fearn is, F-e-a-r-n?

A. F-e-a-r-n, that is correct.

Clyde Muma and they had a representative from Firestone, whose name I don't recall. They at that time—

Q. Just a moment. Was your salesman with them?

A. Yes.

Q. What was his name?

A. Robinson.

Q. Do you recall the substance of that conversation?

A. Yes. They came in and presented the proposed program of going with Firestone TBA—that is, Firestone tires, batteries and accessories—and asked our opinion of that proposal.

My former partner and I were very much in favor of it. We thought it was an improvement in quality of products which were nationally advertised, and more readily sold than the products we were carrying in the past. So we were heartily in favor of it and recommended that Atlantic should make the deal as far as we were concerned.

Q. Shortly after that, did Atlantic begin to sponsor Firestone?

A. Yes, sir.

2607. Q. Now, turning to the year 1951, I show you a document marked CX-150, which is a form letter from Mr. Colley, the Vice President of Atlantic; address is blank in this particular form. Do you recall receiving a letter in that form?

A. Yes, sir.

Q. About a year later; I show you a letter, CX-206, another form-letter from Mr. Colley. Do you recall receiving a letter in that form?

A. Yes, sir.

Q. Finally, quite recently, there is a letter of June 24, 1955, marked CX-207. This particular form is signed by Mr. Estlow of the Philadelphia and New Jersey region. If you had received it it would have been signed by Mr. Davis, the Region Manager for your region. Do you remember receiving that letter or a letter in that form?

A. Yes, sir; I do.

Q. Do you remember dealer meetings being held at about the time Atlantic introduced the Firestone program?

A. Yes, sir.

Q. Did you understand, as a result of those meetings, that the program was a voluntary one?

A. Yes, sir.

2608 Q. Beginning with the introduction of the Firestone program by Atlantic, what tires have you been carrying in your station?

A. Firestone.

Q. What brand?

A. Firestone.

Q. Could you tell us why you prefer the Firestone brand?

A. Well, I have been a Firestone dealer at Hartford for a long time. I preferred Firestone tires long before we sold it. So definitely when we went with the Firestone program I felt that it was easier for me to sell a Firestone, in which I believed, than any other tire on the market. And I am still of the same feeling.

Q. Does the Firestone store give you competitive prices?

A. Yes, they do.

Q. Do you also buy Firestone batteries?

A. Yes, sir.

Q. Speaking of accessories—and by that I do not include parts and things, but polishes, waxes, belts, hoses—where do you buy your accessories?

A. I buy from five different suppliers: Taylor Auto Supply, Suburban, Motor Parts and Service, Motor Car Service, and Chester Auto Supply.

Q. Does the Adams Parts Company call on you?

A. No, they don't.

Q. Does the Keil Company call on you?

2609 A. No, they don't.

Q. You mentioned Auto Parts. Is that the same as Auto Parts and Radiator Company?

A. Pardon?

Q. Auto Parts and Radiator; is that the same company?

A. No.

Q. Does Auto Parts and Radiator call on you?

A. No, they don't.

Q. What kind of oil filters are you displaying and promoting at your station today?

A. Walkers.

Q. Are you taking part in that Walker Hi-Fi promotion?

A. I certainly am. It is advertised at the station.

Q. Have you taken part in promotions for other brands of TBA in the past?

A. I have. Yes, sir.

Q. Including brands not sold by Firestone?

A. That is right, sir.

Q. Have the Atlantic Refining Company people ever criticized you for doing that?

A. It has never been mentioned to me.

Q. Do you feel free to buy your TBA from any source you want?

A. Yes, sir.

Q. And do you feel free to buy any TBA you want?

2610 A. Yes, sir.

Q. When you buy TBA that isn't carried by Firestone, do you charge it on Atlantic credit cards?

A. Yes, sir, I have.

Q. Has Atlantic ever criticized you for that?

A. I have never heard from them.

Q. Have you found the Atlantic-Firestone TBA program helpful to you?

A. Very much. I liked the program very much right from the beginning, and I think it is the most helpful program I have hit in my thirteen years of experience. The Firestone program I find it that the store itself is very cooperative, and they will help a dealer under many con-

ditions to try to make a sale. So besides not only believing in their quality, I like their policy of business.

Q. Do the Atlantic salesmen also help in this program?

A. Yes, sir, they do.

Q. When you opened up your new station—was that a new station when you opened it up?

A. No. I replaced a dealer.

Q. When you first went into that station then in 1957—was it 1957?

A. That is right, sir.

Q. Did representatives of other oil companies indicate to you that they would be glad to have you in their stations?

2611 A. Yes, sir. I was contacted by several; Standard Oil, Tydol, Gulf, and Amoco.

Q. In your experience would you say that qualified gasoline dealers are in demand?

A. Absolutely.

Q. Do you recall in the spring of 1956 a visit at your station from an investigator for the Federal Trade Commission?

A. Yes, sir.

Q. Did you tell him approximately what you told us today?

A. Yes, sir, I did.

Q. Did he ask you for the names of some other dealers that he might go and see?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Overruled.

By Mr. Ballard:

Q. Did he ask you that? You may answer the question.

A. Yes, he did.

Q. Do you know what dealers you referred him to?

A. Cliff Gavin. Nick Tavani.

Q. Why did you refer him to Mr. Tavani?

A. Well, he intimated he had a source of information, and I told him to go and see him on his own.

Q. The same reason for Mr. Gavin?

A. That is right.

Mr. Ballard: I don't think I have any further
2612 questions for you. Perhaps Mr. Kelaher does.

Mr. Kelaher: I have just a few, your Honor.

Cross-Examination by Mr. Kelaher.

Q. I think it has been established that you are the partner of Mr. Foster, was it, who appeared here right before you; is that correct?

A. Yes, sir.

Q. On direct examination you weren't asked this question, but I would like to ask you: What batteries did you carry before you changed to Firestone batteries?

A. Exide.

Q. Weren't Mr. Fearn and Mr. Muna, of Atlantic, Mr. Robinson's supervisors, weren't they the brass, so to speak, in the Wilmington district at that time?

A. That is right.

Q. And they called on you along with a Firestone representative at that time?

A. That is right.

Q. I am speaking now of the time when Atlantic decided to adopt the Firestone TBA program. You say you attended certain dealer meetings. I assume that would be attended by all the Atlantic dealers in the Wilmington area, would it not?

A. That is right.

Q. And at that time the Firestone TBA program
2613 was discussed with the dealers?

A. That is right.

Q. And the tire you handled before you went on Firestone was Lee; is that correct?

A. Yes, sir.

Q. According to your direct testimony you didn't want to handle Lee; is that correct?

A. No. I was handling Lee at the time. I didn't say I didn't. I preferred Firestone to Lee.

Q. You preferred Firestone to Lee, but of course Atlantic was handling Lee so you went along with Atlantic, I presume?

A. At that time with the tire shortages we were fortunate to be able even to pick up Lee.

Q. Atlantic at that time was also selling Exide batteries; is that correct?

A. That is correct.

Q. So you went along with Atlantic; is that correct?

A. That is right.

Q. On direct examination you weren't asked this question, either, but I would like to ask it. You named some suppliers of accessories. I don't think you mentioned Firestone Stores. Do you buy accessories from Firestone Stores?

A. I do.

Q. Did you buy accessories from Firestone Stores when you were in partnership with Mr. Foster?

2614 A. We did.

Q. When you went into your new station, did you obtain a loan from Atlantic?

A. No, sir.

Q. You furnished your own capital?

A. Yes, sir.

Q. Getting back to your first station, I would like to ask you a couple of questions. When you were handling Lee tires you had a Lee sign in your station, did you not, a Lee window decal?

A. That is right.

Q. What happened to that when you went on to the Firestone TBA program?

A. It was on there for about a year before we got a Firestone decal put on there.

Q. And then Firestone went up; is that right?

A. That is right. With our permission.

Q. With your permission?

A. Yes.

Q. Of course. Did you also have a Firestone outdoor sign in your station?

A. Not in the beginning. At Pennsylvania Avenue and Clayton location I don't remember a Firestone outdoor sign. The only place I have ever had one is at the present location.

Q. You do have one at the present location?

2615 A. Yes, sir.

Q. You do also have Firestone decals at the present location, I assume?

A. Yes, sir.

Q. Were they in there when you went into your present location?

A. No. I wouldn't swear on the decals. The outdoor sign was not there. That was just put in just prior to the winter.

Q. I am referring now to—

A. The decals.

Q. —to the decals in your present station.

A. I believe they were.

Q. In any event, you now have Firestone decals and Firestone outdoor signs?

A. That is right.

Q. Of course when Atlantic went on the Firestone TBA program in your first station, you discontinued carrying Exide batteries and began to carry Firestone batteries?

A. Not in the beginning.

Q. But you did?

A. I did eventually.

Q. You went over one hundred percent?

A. That is right, sir. I found it profitable to do so.

Q. And did you know that the Exide battery was made by—that the Exide people also made the Firestone battery?

2616 A. I was aware of that, yes, sir.

Q. You were aware of that. So with the Firestone identification of course, it was much simpler to sell Firestone batteries than the Exide; isn't that correct?

A. That is right.

Mr. Kelaher: No further questions.

Mr. Ballard: I have just a couple of questions, your Honor.

Redirect Examination by Mr. Ballard.

Q. Mr. Elleni, back before 1950 did you occasionally handle Willard batteries, too?

A. Yes, sir, we did.

Q. Now speaking of your present station, I think you said that when you got there there was no outdoor Firestone sign; is that correct?

A. That is right, sir.

Q. Did you ask them to have that sign put up?

A. I certainly did.

Q. Do you think that a sign that is hanging up on the post has much to do with the brand of battery the customer wants?

A. I don't think so, as far as the brand of battery is concerned. The principal reason for asking to have the Firestone sign was when fifty percent of your new equipment, new car equipment is equipped with Firestone
2617 tires, I think it is a wonderful piece of advertising.

Mr. Ballard: I don't think I have any more questions.

Recross Examination by Mr. Kelaher.

Q. I take it from your answer that Firestone advertising is important in the operation of your station; isn't that true?

A. Definitely.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all, Mr. Elleni. Thank you very much.

(Witness excused.)

Hearing Examiner Kolb: We will adjourn until 2:15 this afternoon.

(Thereupon, the hearing was adjourned at 12:33 p.m., to reconvene at 2:15 p.m., this day.)

2618

Afternoon Session.

2:20 p.m.

Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: Mr. Hathaway?

HOLLAND M. HATHAWAY was called as a witness for the Respondent and, having been previously duly sworn, testified as follows:

Mr. Ingraham: Your Honor, I move to strike the testimony and other evidence of the witnesses of this morning, Landis, Tavani, Foster, and Elleni, as not involved in the Atlantic-Goodyear plan. Also, we move to strike as against Goodyear the testimony of the witness Tom Eckhardt, who was the last witness yesterday in Baltimore. I don't believe that the transcript shows our motion on that testimony.

Hearing Examiner Kolb: The testimony of the witnesses named, insofar as it pertains entirely to Firestone, will be stricken as to Goodyear, but remain in the record as to Atlantic.

Mr. Thompson: Mr. Hathaway has previously been sworn and is now recalled.

Direct Examination by Mr. Thompson.

Q. Mr. Hathaway, we established when you were 2619 called on Monday that you are Atlantic's district manager in the Baltimore district.

A. That is right, sir.

Q. What was your first employment with the Atlantic Refining Company?

A. I was first employed by Atlantic in the marine department as an able-bodied seaman.

Q. Was that just before or during the war?

A. It was in 1939.

Q. Did you stay in the Atlantic marine department during the war?

A. Yes, sir, until 1945.

Q. Did you serve on tankers?

A. Exclusively.

Q. What was your position when you left the tanker service?

A. I was a Master.

Q. Weren't you rather young to be a skipper?

A. I guess they were hard to find.

Q. As a matter of fact, you were the youngest in the Merchant Marine at the time, weren't you, Mr. Hathaway?

A. At one time I understand that, yes, sir.

Q. After the war did you continue your employment with Atlantic?

A. Yes, I did.

Q. What was your first post-war position?

2620 A. I went to Boston, Massachusetts, as a salesman trainee.

Q. When you finished your training, did you become a dealer-salesman in Boston?

A. Yes.

Q. How long did you have that position, approximately?

A. Approximately three or four years, I believe.

Q. In your job as a dealer-salesman in Boston, did you handle lessee dealers?

A. Yes, I think I handled only lessee dealers.

Mr. Kelaher: Mr. Thompson, I wonder if we could establish the years as we go along.

Mr. Thompson: May I finish the next question and then I will tie it together, Mr. Kelaher.

Mr. Kelaher: Go ahead.

By Mr. Thompson:

Q. Were you then promoted to sales supervisor in Boston?

A. Yes, sir.

Q. And continued in that position until sometime in 1950?

A. I believe it was 1950. Somewhere in 1950.

Mr. Thompson: Mr. Kelaher, if you want the dates accurately—

Mr. Kelaher: That is accurate enough.

Mr. Thompson: Mr. Hathaway gave me a memorandum which would simplify it. May I show it to him?

Mr. Kelaher: Yes.

2621 By Mr. Thompson:

Q. Using the data which you furnished me, Mr. Hathaway, to refresh your recollection, what year did you leave Boston and in what capacity were you serving when you left?

A. I left Boston in 1950, and at the time I was a sales supervisor in Boston.

Q. From Boston to what city were you transferred?

A. I was transferred to Providence, Rhode Island.

Q. How long did you stay there?

A. I was there approximately four years.

Q. And during that period, what was your position in the Atlantic organization?

A. I was the personnel supervisor for the New England region.

Q. In that position and during those four years, did you have any direct connection with sales?

A. No, sir, I had no sales responsibility at all.

Q. Entirely personnel work?

A. Entirely personnel.

Q. Then at what time were you transferred from Providence to some other position and to what city?

A. I was transferred in 1954 to Charlotte, North Carolina, as the direct marketing supervisor for the Southern region.

Q. That was the early part of 1954?

A. April 1954.

2622 Q. Just in a couple of words, what were the responsibilities of the position of direct marketing supervisor?

A. Direct marketing supervisor is a staff assignment under the supervision of the sales manager of the Southern region, and he is the liaison between the region and the different districts having to do with direct marketing activities through service stations, contract sales, any direct marketing accounts that we may have, all phases of gasoline sales, motor oil, TBA, sales promotion, training.

Q. When you were acting in the capacity of direct marketing manager in the Southern region, were there several people who worked under your supervision in

charge of various aspects of the type of marketing to which you have referred?

A. There were three main categories under the direct marketing manager. They would be the TBA coordinator, the sales promotion coordinator, and the training coordinator.

Q. Do you recall how long you held that position, Mr. Hathaway, and when you were transferred to your present position? Was it in August 1954?

A. I was transferred to Baltimore in August of the same year.

Q. So that since August 1954 you have been the Atlantic district manager in the so-called Baltimore district?

A. That is correct.

Q. Just to refresh your recollection of a fact 2623 already stipulated, would you be kind enough in a very few words to indicate the geographical extent of the Baltimore district?

A. The Baltimore district includes Maryland, with the exception of the eastern shore, and with the exception of a small portion of Garrett County.

Q. That is the extreme northwestern part of the state; am I correct?

A. Yes. It also includes a portion of West Virginia.

Q. So that except for a very small section in northwestern Maryland, and the eastern shore, your district comprises the State of Maryland plus a small portion of west Virginia?

A. Yes, sir, that is right.

Q. Is it a part of your district manager's job to study and become aware of and know the competitive situation in your district?

A. Yes, it is a very big part of the district manager's job.

Q. Does Atlantic have competition from other oil companies in your district, Mr. Hathaway?

A. Yes, sir, we certainly do. We have a lot of competition.

Q. About how many large or major companies are competing with Atlantic for business in the district?

A. I believe there are eleven all together.

Q. Are there, in addition to the eleven major companies, independents?

2624 A. Yes, there are more and more independents every day.

Q. Becoming more and more aggressive?

A. Yes, sir, they are.

Q. Your headquarters are located in the city of Baltimore?

A. My district headquarters are, yes, sir.

Q. In the city of Baltimore?

A. Yes.

Q. Before I come to that, where are the headquarters of the region?

A. Charlotte, North Carolina.

Q. And just as briefly as you have described the geographical extent of the district, would you please describe the geographical extent of the region?

A. It extends from the Maryland-Pennsylvania line, excluding the eastern shore, down the eastern seaboard to Key West in Florida.

Q. You referred to the number of competing companies in the Baltimore district. Are there approximately the same number or the same actual companies which compete in the metropolitan Baltimore area?

A. In the—

Q. In the metropolitan Baltimore area.

A. In the metropolitan Baltimore area I would say exactly the same.

Q. The phrase "metropolitan Baltimore" I shall 2625 have occasion to use again. Would you be kind enough to indicate what you mean by it?

A. To me metropolitan Baltimore includes the city of Baltimore; it includes a good portion of Baltimore County from the east around the north of the city and to the west; it includes a good bit of Anne Arundel County which includes principally Glen Burnie; it would include a small portion of Howard County.

Q. Would I be correct in describing it as a kind of semi-circle with the Chesapeake Bay on the east, Baltimore in the center and which surrounds Baltimore?

A. Yes, sir.

Q. Approximately how many gasoline retailers are there in the district? And I am now referring to the entire district.

A. The Baltimore district?

Mr. Kelaher: May I have the question read?

(The reporter read the question.)

Mr. Kelaher: I object to the question unless it is rephrased. I am not too clear on the question myself.

Mr. Thompson: May I continue for another question, and I will ask him to define what he means by "retailer." I am sure that is what you have in mind.

Mr. Kelaher: All right.

Mr. Thompson: I will rephrase the question to meet your point, which I think is a good one.

2626 By Mr. Thompson:

Q. When I asked you how many gasoline retailers there are in the Baltimore district, I was merely referring to outlets where gasoline is available for purchase by the consumer. I was not referring at this moment to a real service station.

A. Well, I would estimate about 2,200 to 2,300 retail outlets.

Hearing Examiner Kolb: Is that exclusive of service stations?

Mr. Thompson: I am coming to that next, sir.

By Mr. Thompson:

Q. Does that number of 2,200 or 2,300 include what we refer to as service stations?

A. Yes, sir.

Q. How would you define a real service station?

A. I would define a real service station as one that dispenses gasoline, can also do lubrication, possibly washing, can do tire repairs, minor repairs, sells TBA, handles the installation of TBA.

Q. Of the 2,200 or so gasoline retailers in your district, would most of them be service stations in the sense in which you have defined it?

A. No, I would say possibly 1,200 or 1,300 would be real service stations.

Q. May I now direct your attention to metropolitan Baltimore, as you have defined it, and I would like to ask you about how many retail outlets, including service stations, there are in metropolitan Baltimore.

Mr. Kelaher: Your Honor, I wonder if we can have some statement of the purpose of this type of testimony. I am not too clear of the relevancy of it at this point.

Mr. Thompson: It must be obvious to your Honor.

Hearing Examiner Kolb: I am rather confused about these outlets other than service stations.

Mr. Thompson: I don't understand the nature of your Honor's confusion. I should be happy to try to help.

Hearing Examiner Kolb: Are you taking in bulk plants and everything else in that?

Mr. Thompson: That was not within his definition, sir. His definition was retail outlets where gasoline is sold to the consumer.

Hearing Examiner Kolb: Bulk plants sell to fleets. They would be consumers.

By Mr. Thompson:

Q. In your estimate, Mr. Hathaway, were you including such places as bulk plants which serve large industrial accounts?

A. No, sir.

Q. This is just the place where you can buy gasoline for an automobile?

A. Yes, sir.

2628 Q. We are now coming to the question of gasoline outlets and real service stations in the metropolitan Baltimore area. Can you tell us from your long experience and knowledge about how many of each type there are?

A. I would say in metropolitan Baltimore there are probably 1,200 retail outlets, of which approximately 1,000 of them would be real service stations.

Q. Are new service stations being built every year in the Baltimore district?

A. Yes. Every year. It seems like every day.

Q. Have you statistical information available to you which keeps you advised of the number of such stations which are being constructed?

A. Yes, we try to keep advised of that.

Q. Is it part of your job to know the answer to that question, what your new competition is?

A. I consider it part of my job, yes.

Q. About how many new stations have been built in your Baltimore district in the last year or so?

A. Well, in 19—

Mr. Kelaher: Your Honor, if he has to test this, it would probably be easier if he furnished the statistics.

Hearing Examiner Kolb: The witness may answer, if he knows.

2629 By Mr. Thompson:

Q. Answer the question.

A. Our last count showed that in 1957 and the first three months of 1958 there were 100 new service stations constructed.

Q. In Maryland?

A. In Maryland.

Q. And about how many of those would have been in the Baltimore district, your Baltimore district? I am not talking about metropolitan Baltimore; I am talking about your Baltimore district.

A. In all Baltimore it would, as I recall, be more than half.

Q. Are you now referring to the metropolitan Baltimore district? I think we have to distinguish between the two.

A. Metropolitan Baltimore would be approximately half.

Q. You mean Metropolitan Baltimore?

A. Yes.

Q. Then most of the rest of them would have also been built in your so-called Baltimore Atlantic district?

A. Yes.

Q. How many lessee stations does the Atlantic Refining Company have in the Baltimore district?

A. We have 93 lessee stations.

Q. About how many of the 93 are in the metropolitan Baltimore area?

2630 A. About 70.

Q. Could you just indicate briefly where the other 23 are located in your Baltimore district?

A. We have some in Cumberland; we have a couple in

West Virginia; we have some in Hagerstown; we have some in southern Maryland, what we call southern Maryland which is down Route 301; we have a few around Washington suburban area.

Q. But you have none in the District of Columbia, have you?

A. No, sir.

Q. Does Atlantic also sell gasoline through so-called contract stations in your district?

A. Yes, sir.

Q. About how many contract retail outlets have you, including what you have defined as real service stations?

A. We have somewhere around 60.

Q. And of those, how many would you classify as real service stations?

A. No more than five or six.

Q. In addition to selling gasoline to your lessees and to your contract stations, do you also sell to distributors in the Baltimore district?

A. Yes, sir.

Q. How many distributors have you?

A. We have six.

Q. Do those distributors in turn sell to retail 2631 outlets and service stations?

A. Yes, sir.

Q. Could you tell us how many real service stations are supplied in your district by the distributors?

A. All together, about twelve.

Mr. Kelaher: How many?

The Witness: About twelve.

Mr. Kelaher: Did I understand the question correctly? Is it twelve service stations are supplied by the six distributors?

Mr. Thompson: Twelve real service stations supplied by the distributors.

Mr. Kelaher: Real service stations.

2632 By Mr. Thompson:

Q. Mr. Hathaway, would you describe in a general way some of your duties and responsibilities?

9 As a preliminary question: Are you in general charge for Atlantic of the Baltimore district?

A. I am.

Q. To whom do you report?

A. I report to the Regional Manager.

Q. Who makes the policy decisions for Atlantic in your district at the district level?

A. At the district level, I make decisions.

Q. What do you regard as your primary responsibility as District Manager?

A. My primary responsibility is to promote the sale of gasoline through our own service stations and other outlets.

Q. Are your other activities secondary to that primary objective?

A. As far as I am concerned, that is the objective in everything we do and I would even go on to say that that is the objective of everybody who works in this district.

Q. In your capacity as District Manager, do you direct the activities of the Atlantic personnel who are located in your district?

A. Yes, sir.

Q. Do you have an annual expense budget?

2633 A. Oh, yes.

Q. About how much does that budget run a year?

A. It runs somewhat over \$500,000.

Q. Do you recall what it is for this year?

A. I believe it is \$578,000 for 1958.

Q. You are referring to the expense budget, which is under the control of the District Manager?

A. Yes.

Q. What are the principal items of expense which are included in that budget?

A. Well, the principal item, of course, is payroll expense, service station maintenance, terminal up-keep and maintenance, administrative expenses, selling expense. That would be—

Q. Truck maintenance? Is truck maintenance in your budget?

A. Maintenance, yes.

Q. Truck maintenance?

A. Yes.

Q. You referred to terminal expense. What is the terminal?

A. The terminal is the bulk plant where we store our oil and where we warehouse motor oils and that sort of thing.

Q. Are Atlantic's capital expenditures in the Baltimore district included in your District Manager's expense budget?

A. No, sir; no capital expense.

Q. The purchase of sites for service stations, would that not be included in that budget?

2634 A. No, sir. That is capital.

Q. Or the purchase of new trucks?

A. No, sir. That is capital.

Q. Or depreciation on stations or trucks?

A. No, sir. That is not in.

Q. The company trucks or new stations?

A. Has nothing to do with our expense budget.

Q. Or alterations or remodeling of stations which are not mere maintenance?

A. No. Alterations and remodeling would be under capital.

Q. How is your district organized under you? Have you got personnel which have direct contact with your various lessee and other dealers?

A. Yes, I have a sales group.

Q. By classification, who is in the sales group?

A. A sales supervisor, promotable dealer salesman, general salesmen, service salesmen, and I think that covers it.

Q. Do you have a credit supervisor?

A. I have an office manager.

Q. Going back over the people that you have mentioned that have contact with the dealers, there is one sales supervisor?

A. Yes. We have one sales supervisor in the district.

Q. And how many promotable dealer salesmen do you have?

A. I have four promotable dealer salesmen.

Q. How many service salesmen?

2635 A. Four service salesmen. And five general salesmen.

Mr. Thompson: Mr. Kelaher, I don't want to prolong Mr. Hathaway's testimony.

The stipulation, you will recall, describes in a general manner the duties of each of those classifications of salesmen. Would it be of any assistance to your Honor if he, in about four sentences, refreshed your recollection with respect to the jobs that these various people do, what their primary responsibilities are?

Hearing Examiner Kolb: It may be well to have that in the record.

By Mr. Thompson:

Q. Mr. Hathaway, just as briefly as you can describe it, what is the job of the sales supervisor?

A. The sales supervisor is directly concerned with the lessee dealers and contract dealers. It is his job to supervise the promotable dealer salesmen and the general salesmen and the service salesmen in their duties connected with principally the lessee dealers.

Q. Is he second in command in the district?

A. Yes.

Q. In your absence would he function for you? Would he assume your responsibilities, or some of them?

A. May I clarify that? I have also an operations supervisor who is on exactly the same level as the sales 2636 supervisor. One, I think, would be more apt to take command of his own group and the other would handle his people in my absence. If it came to choosing one, I believe I would choose the sales supervisor as the top man.

Q. Your four promotable dealer salesmen report first to the sales supervisor or directly to you?

A. No, sir, they report to the sales supervisor.

Q. What, again, as briefly again as you can describe it, are the duties and responsibilities, the principal ones, of the promotable dealer salesmen?

A. The promotable dealer salesman handles only lessee dealers. His job is to keep the stations operating with the best possible lessee dealer that he can have; to promote the sale of gasoline; and to help them increase their sales of gasoline.

Q. That is their primary responsibilities?

A. As far as I am concerned, yes, sir, that is it.

Q. How about your service salesmen, what do they do?

A. The service salesmen work more or less under the promotable dealer salesmen in training new dealers, training dealers' employees, helping dealers in solicitation or setting up promotions, or that sort of thing.

Q. What do your general salesmen do?

A. The general salesman handles some lessee dealers and also some contract dealers, and possibly some 2637 consumer accounts.

Q. In addition to those people whose functions and primary responsibilities you have described, you, of course, have other personnel in the district.

A. Oh Yes.

Q. And they report either directly or indirectly to you?

A. Yes.

Q. You mentioned, I think, your operations supervisor.

A. Yes. I have an operations supervisor who heads up the Operations Department. Under him would come people such as your chauffeurs, warehouse people, terminal people, dispatchers, pump and tank mechanics, automotive mechanics.

Q. Then you have, I think, a distributor salesman who handles the six distributor accounts?

A. I have a distributor salesman who handles our distributors, a wholesale salesman who handles wholesale fuel oil accounts, and we have—

Q. Do you have another classification called "industrial salesmen"?

A. Oh, yes. I have an industrial salesman who handles big or industrial firms, factories and that sort of thing.

Q. So-called commercial accounts?

A. We call them industrial accounts.

Q. Do you have a real estate representative, too?

A. Yes, sir, we have one real estate representative.

2638 Q. Who in your organization handles credit problems arising out of dealer—out of credits to dealers?

A. Of course we have a credit department based in Charlotte. The office manager of the Baltimore district does handle credit policy on a local level.

Q. What are your responsibilities generally and without going into detail, with respect to leases and supply contracts?

A. Well, I select, I am the final approver as far as the lessee is concerned—

Q. To keep the record straight, are you saying that you are the person in the district who makes the final selection of some prospective operator of a lessee station?

A. Yes, sir.

Q. Are you also the person in the district who makes

the final decision whether a particular lease will or will not be renewed?

A. Yes, sir.

Q. In the event that you had occasion to terminate a lease for cause, would the notice of such termination be your responsibility? The decision whether to terminate, would that be your responsibility?

A. Would you clarify that just a bit? Do you mean during the term of a lease?

Q. Yes.

A. Yes, it would be my decision to terminate.

2639—Q. If you had to terminate a lease for cause during the—

A. If we had to during the term of the lease.

Q. Who, in the Atlantic organization, executes the supply contracts for your district?

A. I execute supply contracts.

Q. You have referred to your responsibility of keeping the 93 company-owned stations operating with lessees. Do you find it easy or difficult to find competent lessee operators in the Baltimore district?

A. I think that is probably the hardest job that we have. By "we" I mean my sales supervisor and myself and my salesman—to find good, competent dealers who can operate our stations. It is extremely difficult to find them. It is difficult in some ways to hold them. Of course, every company is looking for the best dealer that they can get to run a particular station which in itself subjects all of us to raiding each other in trying to entice each other's dealers away from them in any way that we can.

Q. There is no stand-by arrangement among the major oil companies in your district not to ^{raid} ~~void~~ each other's dealers?

A. If there is, I have never seen it.

Q. Is there?

A. No, sir. I will take every dealer that I can get from any competitor at any time, if he is any good.

Q. Do you find that your competitors have the same attitude with respect to Atlantic?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Overruled.

A. Yes. My competitors will take every good dealer I have got, if they can get away with it.

By Mr. Thompson:

Q. You referred to a "good dealer". How would you describe a good dealer?

A. To me; a good dealer is a dealer who is a good manager, and that means a good manager of money, a good manager of people, of people that are working for him, a good manager of his stocks and his records, and inventory, a man who isn't afraid to work hard, who has a good sales ability or a sales appeal to the public, somebody who can be out and solicit for business and make people like him enough to want to come in and do business with him; somebody who will keep a station clean and attractive, who is always interested in getting additional business.

I think that about covers it.

Q. Do you know, from your experience, what a good dealer, as you have described him, can net annually out of the operation of an Atlantic service station?

A. Yes. A good average dealer can net between \$10,000 and \$15,000 a year.

Q. Have you some that do considerably better than that?

2641 A. Yes, we have some who admit to doing considerably better.

Q. As high as what?

A. As high as \$25,000 a year.

Q. Does Atlantic have an interest in its good dealers taking an active interest in civic and community affairs?

A. Yes. We would like very much to have all of our dealers become active in their community. It is very good business. They are doing business with the people in their community, and I think we like to have them looked up to as solid, substantial businessmen. And anything that they can do to help themselves get established in their community by joining various organizations, such as community clubs and businessmen organizations, chambers of commerce, and that sort of thing, we would certainly like to help them, and we do try to promote it.

Q. Are a number of them active in Rotary and similar organizations?

A. Yes, a number of them are.

By Mr. Thompson:

Q. Did you preface your remark with "surprisingly enough", Mr. Hathaway? Does this status of your dealers surprise you?

I wonder what you meant by "surprisingly enough".

A. Well, when you talk a long time to a dealer in trying to get him to join in the community affairs, sometimes it does surprise you just how far they go with it, and just how many organizations they do belong, and just how substantial they do become in their communities.

Q. Did you tell me one of them was the mayor of a town?

A. Mr. Kelaher objected to my talking about him.

Mr. Keiaher: He was with another station, I take it; another company.

By Mr. Thompson:

Q. Do you try to keep a good list of dealers in Atlantic?

A. Yes, sir; we will do every thing we can to keep our good lessee dealers with us just as long as we can keep them with us.

Q. Do you try to help them to be successful?

A. We will do anything we can to help them be successful.

Q. When you have to replace a lessee dealer; is 2643 there any expense involved?

A. Yes, there is considerable expense.

Q. Would you amplify that and tell us what it would involve?

A. Well, we like to send all of our new dealers through a training school, which is of five-week duration. Our training school in this region costs us \$780 per trainee. Together with that when we put a man in the station we put a service salesman in with him for two weeks which costs us approximately \$250.

To estimate the time that a salesman spends in looking for a dealer would be very hard to do. The time that the sales supervisor spends in assisting the dealer, or the dealer salesman, excuse me, to find a dealer is something else I wouldn't know how to estimate. The number of ads we put in a paper, the running around that we do in our automobiles, the night work, and that sort of thing involved in looking for a dealer is something that I just wouldn't know how to measure.

Q. If a station shut down and you had no lessee, you would lose gallonage, too, wouldn't you?

A. I would lose gallonage; and a lot of sleep, and so would everyone else involved, I think.

Q. In your experience, have you found whether good dealers do or do not develop their personal following of customers?

A. Yes. Any good dealer will develop a goodly 2644 portion of his business as a personal business. People come in to see the dealer. They don't come in to buy a particular brand. They come in because they like the man, they like the service they get, they like the way they

are treated, and the work that is performed on their car. So each dealer, each good dealer, you can certainly point to a great portion of his business as being his own business.

Q. Does such a dealer have any difficulty in your district in finding another station to operate, other than Atlantic?

A. Any good dealer in Atlantic in our district could find any number of good stations, if he wanted to.

Q. Are dealers of the type to which you refer economically dependent upon Atlantic?

A. No, they certainly aren't economically dependent upon Atlantic. In fact, Atlantic is much more dependent upon its dealers than any dealer is dependent upon us.

Q. Mr. Hathaway, from time to time you do lose lessees, do you not?

A. Yes, we do.

Q. What are the primary reasons why you lose them?

A. I think there are several reasons. One of them is that the man might become ill. He may not like the hours, because the hours are long. He may not like the hard work, because the work is hard.

One of the things that is becoming increasingly difficult is the fact that his wife doesn't like the hours that he spends working at the station.

He may have financial problems, either he goes broke, he may over-extend himself on credit to his customers, and of course when they don't pay him immediately he is in trouble financially.

The neighborhood could change from a residential to commercial and he might lose a lot of business that way and just become discouraged and want to leave for that reason.

Q. What is the Atlantic policy in your district and what is your policy with respect to term of leases?

A. To term of leases?

Q. Yes. What duration?

A. Our leases—

Q. How many days, weeks, months, or years, in other words?

A. Our lease, we have a one-year lease which we give to a new operator for a two-year period. At the end of the second year we extend to him a three-year lease.

Q. Suppose one of your lessees had a three-year lease, and wants to quit at the end of six months or a year and a half, or some time before the end of the lease. What is your policy with respect to that lessee?

~~customer business. They discuss with him the fact that we sponsor Firestone TBA in this district. They discuss~~

A. Our policy then is to immediately go out and look for a replacement for that particular dealer and as soon as we can get one we replace the man and allow him 2646 to cancel his lease by mutual consent.

Q. In other words, you don't hold him to the full term of his lease if he wants to leave?

A. No. There would be no sense in trying to hold him if he wanted to go. He certainly would not want to do much business while he was there, and we would have nothing to gain by trying to keep him.

Q. Do you recall any situations since you have become the District Manager in the Baltimore District where, during the term of a lease, you have cancelled the lease for cause?

A. No, sir. There has been none of that since I have been District Manager in Baltimore.

Q. What percentage of the lease terminations during the term of lease have been instigated by the dealer or with the dealer's full consent? All of them?

A. 100 percent.

Q. Do you know what this thing is that is called a "warning letter" to a lessee?

A. I know what it is, yes.

Q. Have you had occasion to write warning letters to lessee dealers since you have been District Manager in the Baltimore District?

A. I wrote one once. That was some while ago. I just don't use them myself. I think it is much better to go out and talk to the dealer and tell him what the problem 2647 is, discuss it with him, and in every case we have seen eye-to-eye and been able to straighten out our difficulties and gone on from there.

Q. What sort of difficulty would cause you to make that kind of visit to a dealer?

A. We think a dealer, in order to do business in our station, has got to keep a clean-looking station, attractive to the motoring public. We want him to keep the rest rooms clean. And that can be quite an irritating problem in some cases.

We also, of course, want him to give good service as well as keep the place clean. And that would be the only problem that we would have, would be in housekeeping. And somewhat in service.

Mr. Thompson: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: We will take a recess for five minutes.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

By Mr. Thompson:

Q. Mr. Hathaway, before the brief recess you referred generally to the fact that there were difficulties in 2648 finding lessee dealers in your district. Would you

describe for us how the district goes about locating potential dealers? What do you do?

A. Well, we put ads, of course, in the newspaper.

Q. Before you go to another subject: Do you find that an effective means of producing potential dealers?

A. Newspaper ads?

Q. Yes. Does it work? Do you get response?

A. We get some response. It is not any more effective than any other way.

Q. What other means do you adopt besides newspaper advertising?

A. Of course we contact competitive dealers, we contact competitive dealer's employees, we contact our own dealers in hopes that they would know of a customer or friend who might be interested; we contact our dealer's employees; we go to clubs, to the police department, the fire department, any organization that we can find. We even go to churches, we go to barber shops, we go door-to-door soliciting. I would guess we go just any place that we think we can possibly find anyone who would either know of anybody who would be interested in a service station or who themselves might be interested.

Q. When you say "we", do you refer to yourself as well as your salesmen? Do you personally participate 2649 on occasions in the search for lessees?

A. Mr. Thompson, I am always on the search for lessee dealers myself.

Q. How do your salesmen get to know competitive dealers and their employees?

A. I personally try to get my salesmen to contact every competitive dealer in their particular territory as they make their rounds, to look at them, to know them, so that in the event they find that he is a good dealer and can become friendly and get a chance to tell them how good Atlantic is and how good our stations are, that perhaps

when the time comes that we need a dealer we can steal that particular man.

Q. Do you think, sir, that is a violation of Section 5 of the Federal Trade Commission Act?

A. Sir, I don't know Section 5.

Q. As a practical matter, if you can raid a competitor and get one of his lessees or the attendant of his lessees, does that save Atlantic expense?

A. It not only saves us expense because we have much less training to do, it also has the added inducement of having the man bring with him some of his customers who traded with him because they like him, and he can usually transfer them to the next station that he takes.

Q. Mr. Hathaway, I wish you would describe for us the procedure for screening potential dealers. Let us 2650 assume that one of your salesmen has located somebody that might be a prospect. What happens?

A. Our salesman in the very beginning would sit down with the applicant and discuss Atlantic, would discuss the station, would discuss the prospect's finances, his experience, try to determine in the station-man's mind the man's potential ability to run a station successfully, and once he has determined all of those facts then he would bring him into the office or ask the sales supervisor to meet with him in the field to interview the applicant a second time and give—

Q. Excuse me. You said he would do that. Is that in fact what happens?

A. Yes. Always.

Q. Go ahead.

A. The sales supervisor then has a chance to go over the same facts and arrive at his own decision as to how he personally feels about the man. If the ~~salesman~~ and sales supervisor both agree that this is a good prospect, one that they would like to see in an Atlantic station or

in any particular Atlantic station, then they bring him in to me and sit down with me and I, too, discuss Atlantic, the station, the potential, and so forth, with the prospective dealer.

Q. Under the routine when the salesman brings a potential lessee to an interview with the sales supervisor, is there any discussion of TBA and, if so, what is it?

2651 A. They discuss TBA. They discuss the fact that we, in Atlantic, think a dealer should sell TBA because it is advantageous to him in the station, and it helps build the business and make customers, well, increase his customer business. They discuss with him the fact that we sponsor Firestone TBA in this district. They discuss with him the fact that we do not in any way force or try to coerce the dealer to buy, that he has complete freedom of choice. However, that we would like him to carry TBA regardless of where he gets it.

Q. If the potential lessee passes the supervisor and he is brought to you as District Manager for your final decision, do you have a personal conversation with him?

A. Yes, I do.

Q. Would you indicate the nature of the discussion that you have? What do you talk about?

A. Yes. I talk about the station itself, the business potential that I think it has, what we expect of a dealer in the way of good appearance and good service, good operation. I discuss the fact that we are interested in gallons in that station, and helping him every way that we can to build up the volume of gallons in the station. The fact that we are interested in helping him become successful and become a sound, solid businessman. The possibility of him getting acquainted in the community in which he is going to do business.

2652 We talk about—I talk to him about the fact that we do promote Firestone in the Baltimore district. However,

I make clear to him and make sure that he understands that there is no forcing, no coercion, that he can buy whatever he wants wherever he wants it, and that he has a complete freedom of choice.

Q. Assuming that the man gets by the interview with you and that a lease is signed, is there any document delivered to him with his lease, and if so, what is it?

A. Yes. With his lease he has a 11-point letter and the "No Forcing" letter.

Q. By the "No Forcing" letter, you mean one of the letters in the form written by Mr. Colley stating Atlantic's TBA "No Forcing" policy?

A. That is correct.

Mr. Kelaher: Your Honor, there are a number of such letters in the file. I wonder if we could have a reference to a specific exhibit.

Mr. Thompson: Happily. I thought we had them in the record so many times we didn't need them any more.

Mr. Kelaher: I am just asking which one.

Hearing Examiner Kolb: It is already in the record.

Mr. Kelaher: Just refer to the exhibit number.

Mr. Thompson: Commission Exhibit 207.

2652 By Mr. Thompson:

Q. Is it your job as Atlantic's District Manager to implement and enforce that "No Forcing" TBA policy?

A. Yes, sir.

Q. What is your understanding of that policy, Mr. Hathaway?

A. My understanding of the policy is that we promote Firestone. However, a dealer is free to buy where he wants it, or where he wants, what he wants, when he wants, and that our salesmen in no way, shape or form will do anything to force or coerce the dealer.

Q. Have you any policy against non-Firestone TBA?

A. None whatsoever.

Q. How does your sales organization, the sales people who work under you, learn that that is Atlantic's policy?

A. Well, they see the letter when they deliver it with the lease, for one thing. They have gone to a training school where the dealer and the salesman-trainee hear the "No Forcing" policy explained. They hear me talk about it when I talk to prospective dealers. I am sure they would hear the sales supervisor talk about it when he talks to prospective dealers.

Q. Can you state, of your own knowledge, that your salesmen know that policy?

A. My salesmen know that policy.

Q. You referred, a few moments ago, to some 2654 statements which you made to prospective lessees about advantages to them in selling TBA at their station. I would like you to supplement those few remarks by explaining the reasons why Atlantic has a TBA program in your Baltimore district at all.

Is my question clear?

A. Yes, sir.

Mr. Kelaheer: It isn't clear to me.

Would you read it?

Mr. Thompson: Then I would like to have it repeated because it is an important question, Mr. Kelaheer. And if you don't understand it I am sure the witness won't understand it.

Mr. Kelaheer: I am not saying I didn't understand it. You lost me about half way down.

Hearing Examiner Kolb: Read the question.

(Question read.)

The Witness: The advantages to a dealer are mainly that it will help him increase the business in his station. A dealer today won't make money selling simply gasoline.

A customer today wants to be able to buy just about

anything for his automobile in the station in which he is going to trade.

We think that the advantages of having a program 2655 with a quality name such as Firestone is advantageous to the dealer because it is an item that is easy to sell; it is a nationally advertised brand; it is very well accepted in the Baltimore area; the price to our dealers is good; very competitive; the service is good; there is one service point that the dealer has to think about; there is one Firestone salesman that he would have to worry with instead of a bunch of different suppliers for very different items; our own people know something about the quality and the methods and the ways to sell it. I am running out of—

Q. Without such a plan, would the inexperienced dealer, in your opinion, be at a disadvantage?

A. I think the inexperienced dealer could be at a great disadvantage because he wouldn't know what he should have. He would be visited by droves of jobber salesmen who would be trying to sell him just about anything and everything; he would have an inventory of items which may wind up as being unsalable, sitting on his shelves and tying up his money; he might not have an item which he could sell because it isn't nationally advertised and a good quality brand, so that his customers might object;—

Q. I don't mean to interrupt you, but might I ask you this question—

Mr. Kelaher: I think he was finished, wasn't he?
2656 By Mr. Thompson:

Q. Had you finished, Mr. Hathaway? I have a supplemental question.

A. Please go ahead, sir.

Q. Does Atlantic regard it as part of its function to advise dealers, regardless of brand, what types and items of TBA they will find salable?

A. Oh, yes. Yes, we like to do that because we want a dealer to be successful. That is our main object in life. If he can be successful he is going to sell more of our gasoline.

And that is all that we are really interested in, selling more gasoline and more Atlantic motor oil. And if we can help a dealer get his money in items that he can move, regardless of what they are, so that he can realize a good profit return on that merchandise, then he is going to be able to build himself up successfully as a good businessman and his station will sell more and more volume of gasoline.

2657 Q. Is it true, Mr. Hathaway, that from time to time new and improved items of TBA are introduced by one company or another?

A. Yes. I think—well, let's take a look at the dry-charge batteries. They came out not too long ago. They were introduced—I have heard it mentioned that Firestone was the first. It was a new item. A lot of people didn't know much about it. Our people were trained and explained the whole situation as far as the story on the new item. They in turn explained it to our dealers. Tubeless tires and other things, that was a relatively new ~~item~~^{item}. There were a lot of questions about it, how you change a tire, and how you put a tire on a wheel, a new tubeless tire on a wheel, what it does, how you repair them. All of those things are new to the trade, and somebody has to get out and explain to these dealers, so that they know how to service them.

Q. Is that a part of the function of your sales force?

A. Yes, sir.

Q. You have explained why a TBA line is advantageous to the dealer. I think you mentioned in passing that you regard the sponsorship of a good brand as advantageous to Atlantic. Have you specific reasons for that statement?

If I haven't made that clear, I can simplify my question.

Why is it advantageous to Atlantic as a company to 2658 sponsor the Firestone line?

A. In my opinion it is advantageous to Atlantic because it does promote the sale of more Atlantic gasoline, and it makes our dealers more successful. And a successful dealer is a dealer who is selling more and more gasoline every single year.

Q. You have explained fully and clearly Atlantic's "no forcing" TBA policy. Why is that Atlantic's policy?

A. Well, it isn't good business to force a dealer to do anything. He is only going to leave you. And if a good dealer leaves you then we lose business.

Q. Could you force your dealers to buy something they didn't want, if you tried to?

A. I have never seen one that you could—a dealer, that is, that you could force him to do something he didn't want to.

Q. Is a part of your job to handle dealers complaints?

A. It is part of my job, and it is also part of the sales supervisor's job.

Q. To the extent that you get complaints, what do they relate to primarily?

A. Dealer complaints relate primarily to the fact that they don't have enough facilities in their station, they want another bay or they want a bigger window, or remodel the whole station, or put more pumps on, widen the driveway.

2659 Q. Have you ever in all your experience as Atlantic's district manager ever received a complaint from any dealer that any Atlantic salesman was trying to force or pressure him to buy Firestone TBA?

A. No, I have never heard of such a complaint, either as district manager or before that.

Q. Atlantic inspects its stations, does it not?

A. Oh, yes.

Q. Would you briefly describe what types of inspection of stations are made?

A. Yes. We inspect their appearance and we inspect their service, because as far as we are concerned, as I think I probably said before, a good station is one that is attractive to the motoring public to get them into the station, and when they come in gives them good service in order to keep them coming back.

So therefore, we have what we call a shopper inspection in which we send people around to approach the station as a customer would, and just record what they see as a customer as far as the outside appearance of the station. Either it is attractive to them or it is dirty; their rest rooms are either clean or they are dirty; and the service that you get at the pump island either is good service or bad service.

Q. Is the type inspection you are referring to made in the district under your supervision?

2660 A. Occasionally.

Q. Does the region inspect your stations? Does the regional headquarters inspect your stations?

A. Yes. The region has a definite plan set up to inspect our stations during the year.

Q. Does Atlantic's home office in Philadelphia occasionally send somebody out to inspect your stations?

A. Yes. They have a plan in which they inspect a percentage of the stations in the region during the year.

Q. Is my understanding correct, then, that there would be inspections that would emanate from three different levels: the district, the region, and the home office?

A. Yes. But primarily from the home office and the region.

Q. Do the results or reports of such inspections come to your attention?

A. Oh, yes.

Q. Is the brand of TBA carried by your dealers ever the subject matter of any comment in any of those reports?

A. No. TBA has absolutely nothing to do with it. We are interested, as I said, in the appearance of the station and in the service that the person gets at the pump island.

Q. Mr. Hathaway, is a part of your job to get out to the field and see your dealers yourself?

A. Oh, yes.

Q. Do you sometimes do it all by yourself?

2661 A. Yes, occasionally.

Q. More usually do you go with another one of your salesmen or the sales supervisor?

A. Yes. I like to ride with my salesman or with my sales supervisor.

Q. Do you know each and every one of your lessee dealers?

A. Yes, I know them all.

Q. Have you visited each and every service station at which Atlantic gasoline is sold in your district?

A. Oh, yes. I visit them frequently.

Q. In addition to your lessees, do you know your contract station operators?

A. Yes. I would see them not as frequently, probably, but I do know them and I do see them occasionally.

Q. Do you even visit from time to time the service stations which are supplied by Atlantic distributors?

A. Oh, yes. Yes, sir.

Q. When you visit these stations, do you observe the TBA which they are selling? Do you see it?

A. Yes, I try to observe everything that I can when I visit the station.

Q. If a dealer is handling non-Firestone TBA, from your own observation, is it openly displayed?

A. Oh, certainly.

Q. Do you see it in these stations?

2662 A. Yes, sir. It is open so everybody can see it.

Q. You of course know that your various dealers sell TBA on Atlantic credit cards. Does that make the slightest bit of difference in the world to you whether the TBA charged on Atlantic credit cards is sponsored or non-sponsored TBA?

A. It wouldn't make a bit of difference to me what it was.

Q. The TBA credit tickets are routed through your office to the credit department in Philadelphia, are they not?

A. They would be when they are used by the dealer as cash payment, or in lieu of cash.

Q. And that is a system by which the dealer is permitted to come to your office and cash credit tickets?

A. No—

Mr. Kelaher: Objection. I think on questions of this type, instead of a leading question, it would be better to ask just what the procedure is.

Mr. Thompson: Mr. Kelaher, I was trying to conclude this afternoon, but I see now it is going to be impossible. So I apologize for the leading question. I confess my error. I was merely trying to expedite the hearing. I will now ask it in the proper manner.

Mr. Kelaher: Very good. Very well said.

By Mr. Thompson:

Q. Would you be kind enough to explain, sir, how this credit deal works?

2663 A. Let me go back to the beginning.

A dealer writes up a credit ticket on a credit card sale, holds them in his station and has the prerogative of either sending them to Philadelphia to our credit department, which if he does has a check returned to him from the Philadelphia credit department, or he can use those credit tickets to pay in lieu of cash for gasoline or motor oil which we deliver to him.

In the event they are used as cash to pay for gasoline or motor oil, the chauffeur would bring them back and turn them in to the cashier in our district office.

Q. Will you be kind enough to state when the credit tickets—is that what you call them?

A. Yes. That is what I call them.

Q. —when the credit tickets are brought into your office, whether some one does or does not look at them to ascertain whether TBA is or is not a sponsored brand?

A. Some one adds up the money to see that the dealer got the right addition, and that is the end of it.

Q. Is it a matter of supreme indifference to you what brand of TBA is on the ticket?

Mr. Kelaher: Objection, your Honor.

Mr. Thompson: I withdraw the question.

Hearing Examiner Kolb: Overruled. Let him answer.

2664 A. I don't see the tickets, so it is absolutely no concern of mine.

By Mr. Thompson:

Q. Seriously, Mr. Hathaway, is any point made by your organization with respect to the brand sold on credit cards?

A. No, sir, no point whatsoever.

Q. From your observation in visiting your lessee stations, contract stations, and the stations supplied by your distributors, what TBA brands do the dealers carry?

A. What do they carry? What brands?

Q. Yes. What do they carry?

Mr. Kelaher: Objection, your Honor. Unless we attempt to get some foundation laid similar to the type we were required to lay every time we got into this question.

Mr. Thompson: I don't know what you are talking about.

Hearing Examiner Kolb: He is talking about the men

in this man's district. He knows the dealers and visited them periodically. I think he should be able to answer that.

Mr. Kelaher: Would you read the question again, please?

(The reporter read the question.)

Mr. Kelaher: I think counsel intended to add "in your district."

Hearing Examiner Kolb: He mentioned, the ones 2665 which he visited, so I assume it would be limited to his district.

The Witness: The numbers of brands of varied items are so many I couldn't name all of the brands. All I can say is that the dealers buy what they want to buy from wherever they want to buy it, any kind of brand they want to buy, because they are all over, they all have every different kind of brand, it seems.

By Mr. Thompson:

Q. I will come back to that with a little more detail later.

Mr. Hathaway, in your district approximately what are your gross commissions from the Firestone Company per annum?

A. Approximately \$20,000.

Q. That would be about \$1,700 a month?

A. About.

Q. On your annual expense budget for your district, if my recollection serves me correctly, for non-capital items, payroll and maintenance, as you have described, it is in excess of a half million dollars a year?

A. That is correct.

Q. And this year it is running at the rate of \$578,000?

A. That is correct.

Q. So that your TBA commissions would be about four percent of your out-of-pocket payroll and expense 2666 budget in your district; is that correct?

A. That is close, yes.

Mr. Kelaher: What did you say?

The Witness: It sounds close.

By Mr. Thompson:

Q. What are your gross sales of petroleum products in your district each year?

A. Our gross sales would be about \$8,000,000.

Q. Are you a good enough mathematician to tell me without a calculating machine what percent of your gross sales are represented by the gross commissions received from Firestone?

Mr. Kelaher: Your Honor, I am going to object to this line of questions unless we are a little more specific; unless we lay a foundation for the sales involved and other factors which he is casually talking around here.

Mr. Thompson: I will be glad to make it more specific.

Hearing Examiner Kolb: You were talking to the back of the room on the last part of the question. Will the reporter read it?

Mr. Thompson: I will withdraw the question and make it more specific.

Hearing Examiner Kolb: All right.

By Mr. Thompson:

Q. Do I understand that the gross commissions 2667 received in your district annually from the Firestone plan are in the order of one-quarter of one percent of your petroleum products revenues?

Mr. Kelaher: Objection. If there was ever a leading question, that is it.

Hearing Examiner Kolb: Has this witness testified to anything that would permit that question?

Mr. Thompson: This witness has testified, sir, that his gross sales of petroleum products in his district are \$8,000,000 annually. He has also testified that his gross commissions from the Firestone plan are \$20,000 annually.

I pride myself, sir, on being an excellent mathematician, and I just computed the percentage and came out with one-quarter of one percent.

Mr. Kelaher: I think he should develop these figures in a proper way. We are getting a lot of leading testimony and I am not objecting to most of it. But I think we are going to have to call a halt pretty soon.

Hearing Examiner Kolb: You have the figures; the percentage is just a matter of computation.

Mr. Thompson: That is right.

Mr. Kelaher: I am not sure it is, not on that question. He referred to something about a quarter million dollars. I haven't heard him talk about that yet.

Mr. Thompson: A quarter million dollars? What 2668 is this?

Mr. Kelaher: What did he say before that?

Hearing Examiner Kolb: Gross sales were how much? \$8,000,000?

Mr. Thompson: \$8,000,000.

Hearing Examiner Kolb: And the TBA was \$20,000?

Mr. Thompson: TBA gross, \$20,000. One-quarter of one percent.

Hearing Examiner Kolb: All right.

Mr. Thompson: I will take another line, Mr. Kelaher, and you can indulge in mathematics on cross-examination if you want to.

By Mr. Thompson:

Q. Mr. Hathaway, as district manager of Atlantic in this Baltimore district, which is more important to you: gross dollars received as commissions from Firestone or the intangible advantage to Atlantic of having a Firestone TBA line?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Overruled.

A. I think the fact that we drew \$8,000,000 worth of petroleum business certainly is much more important to me than \$20,000 in commissions:

By Mr. Thompson:

Q. That wasn't my question. Which is more important: the dollar commissions you receive from Firestone, or the intangible advantage to Atlantic of having the Firestone plan for your dealers? That is my specific question.

A. The intangible advantage to having a Firestone program is much more important to me.

Q. Does Atlantic have direct expenses in promoting the Firestone TBA line in your district?

A. Oh, yes.

Q. The company has on its staff a full-time TBA coordinator?

A. They have on the regional staff a full-time coordinator of TBA. They also have one in the headquarters staff in Philadelphia. And I am sure he has a group working for him.

Q. Let's take the regional TBA coordinator first. Is my recollection correct that at one time he worked under your direct supervision?

A. Yes, that is correct.

Q. Does the regional TBA coordinator visit your district now that you are a district manager?

A. Yes, he would visit my district probably once a month.

Q. For how long on each trip on the average?

A. He would stay anywhere from two or three days to the whole week.

Q. Are there regional staff groups which concern themselves with Firestone TBA in your district?

A. I am sure that the regional manager is concerned with TBA, and the sales manager is concerned with TBA, and the direct marketing manager is concerned with TBA. And of course the coordinator is very definitely concerned with TBA.

Q. Which of the Atlantic employees in your district paid out of your expense budget have as a part of their job the promotion of Firestone products, or the assistance of Firestone? Do you understand that question or shall I make it more specific?

A. I believe I understand the question. It is part of my job to promote Firestone TBA. It is part of my sales supervisor's job; it is part of every promotable salesman's job; it is part of every general salesman's job; it is part of the distributor salesman's job.

Q. Reverting to your prior testimony when you said that you have in your district one district manager, one sales supervisor, four promotable dealer salesmen, four service salesmen, five general salesmen, and one distributor salesman, that would make 16 Atlantic employees compensated out of your half-million dollars annual expense budget—

A. Right.

Q. —who have direct responsibilities with respect to the promotion of Firestone TBA. Is that correct?

A. That is correct, yes, sir.

Q. Have you considered and are you able to estimate the percentage of time spent by your salesmen in the 2671 promotion of Firestone TBA?

A. Yes. Our figures indicate that the average salesman in our district spends between ten and twenty percent of his time in actually promoting Firestone TBA.

Q. I was referring a moment ago to expense incurred by Atlantic in assisting Firestone. Is extra compensation

paid to your salesmen on Firestone orders from their accounts?

A. Extra compensation is paid an Atlantic promotable dealer salesman and general salesman for TBA that they sell over and above a certain quota.

Q. By the word "quota" what do you mean? What is a quota in the sense that you have used it?

A. It is how much they sold last year versus this year, actually. Last year's sales would be the base.

Q. In other words, it is a sales objective which you ask them to try to meet?

A. Yes.

Q. Would that be a correct interpretation of what you are talking about?

A. Yes.

Q. Do your service salesmen actually help dealers in the operation of their stations?

A. In that they train the dealers and train the dealer's employees in the operations, yes.

Q. Do you have what are sometimes called clinics for dealers?

2672 A. Yes, we have them all the time, for both dealers and employees.

Q. What is a clinic in the business of marketing petroleum products at retail through service stations? What does the word mean?

A. Well, a clinic is a short training course which may take place for a day in the service station of a dealer, or it might be that the dealers or the dealer's employees all go to one station in a given area, and there they spend a day in being taught and trained on various things, such as possibly driveway service, possibly selling tires or selling batteries or servicing them or putting on oil filters or something of that order.

Q. Do you also have dealer meetings occasionally in your district?

A. We have dealer meetings, oh, yes. Atlantic has them.

Q. About how many times a year would you have a dealer meeting in a given area?

A. Our salesmen can have dealer meetings, they can have them maybe half a dozen times a year. It depends on the salesmen and the amount of times he wants to get his dealers together to have a meeting.

Q. This in-station training provided by your service salesmen, your dealer clinics and your dealer meetings, involve expense to Atlantic, do they not?

2673 A. Oh, yes. It is a direct expense.

Q. To what if any expense do those three things to which I have referred—that is, the in-station training the dealer clinics, and the dealer meetings—aid the promotion of Firestone products?

A. In the in-station training we are trying to sell Firestone products if the dealer has Firestone products, or any other TBA products he might have.

When we are having a clinic we are trying to help him learn more about batteries and that sort of thing, or tires or how to sell them.

At dealer meetings we occasionally talk about subjects, the salesman does, that may be new to the business, new to TBA industry itself that a dealer should know about and should know something so that he can properly handle them when they come into his station.

Mr. Kelaher: I am not sure that is responsive to the question. I think the question was limited to how it aids Firestone TBA. I am not sure he understood it. I heard Firestone once in his answer. He is referring to other TBA, too.

Mr. Thompson: Is there a motion?

Hearing Examiner Kolb: Is there a motion to strike?

Mr. Kelaher: I will let the answer stand.

Mr. Thompson: Mr. Examiner, I see that the 2674 time is 4:25. I am not possibly going to be able to complete this examination tonight. I have, however, a suggestion I would like to make, very largely in the interest of assisting my friend, Mr. Kelaher. I could lead into it perhaps this way:

By Mr. Thompson:

Q. Mr. Hathaway, did you come to my office in Philadelphia several weeks ago?

A. Yes, I did.

Q. Did we have a discussion about what the Atlantic salesmen in your district do to promote Firestone TBA?

A. Yes.

Q. Did you give me a great deal of information on that subject?

A. Yes, sir.

Q. During the course of the conversation did I make notes and did we then jointly prepare an outline of the subject matter which we had discussed?

A. We did.

Mr. Thompson: If your Honor please, in the morning, when we resume, I think it would save you, sir, and all of us, a lot of time if I were permitted to ask Mr. Hathaway just one question on this subject, and that is this: What do the Atlantic salesmen do to promote Firestone TBA?

If he were permitted then to refresh his recollection by the use of the outline which he and I jointly prepared.

2675 I am bringing that subject up at this time, because I would be charmed and delighted to give Mr. Kelaher a copy of it to study overnight, if he wants it.

Mr. Kelaher: I would be charmed to take a copy of it if it is understood that there is no commitment being

made as to my decision in the morning as to whether or not I will object or not.

Mr. Thompson: Then you can't have it. That is easy.

We will proceed in a leisurely manner, Mr. Kelaher—

Mr. Kelaher: How can you expect me to accept something I have never seen?

Mr. Thompson: May we go off the record for a second?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Thompson: Mr. Kelaher, I am not asking you to accept anything. I am simply suggesting that it would expedite this proceeding if this witness were permitted, in answer to a question, to refresh his recollection by using notes which were in effect prepared by him. Have you any objection to that procedure?

Mr. Kelaher: I may have, because as I understand the rule of evidence—without making a check on it right now—you can use a document to refresh a witness' recollection with respect to the particular subject he is testifying to. Your question was, "What do Atlantic salesmen do to promote Firestone TBA?" What he said to you is of little or no importance, and whether or not you give him a memorandum to recollect what he told you seems to me to be carrying the rule of evidence pretty far.

I am not prepared to make any statement one way or the other at this time.

Mr. Thompson: Mr. Kelaher, you have just wholly missed the point. This man can testify from his memorandum, which includes a lot of topics which he wants to discuss, or I can ask him the questions. We will play it either way you like.

Mr. Kelaher: Let's ask the questions.

Mr. Thompson: That seems to me fine.

May we adjourn for the day, sir, and take it up at 10:00 o'clock in the morning?

Hearing Examiner Kolb: We will adjourn until ten o'clock tomorrow morning.

2678 Hearing Examiner Kolb: The hearing will come to order.

HOLLAND M. HATHAWAY resumed the stand and, having been previously duly sworn, testified as follows:

Direct Examination (Resumed) by Mr. Thompson.

Q. Mr. Hathaway, during your testimony yesterday you referred to some sixteen sales personnel in your district who did something or other with respect to the promotion by the Atlantic Refining Company of Firestone TBA. Do you recall that testimony?

A. Yes, sir, I do.

Q. Is it a part of their responsibility to point out to dealers what they deem to be the advantages of the Firestone TBA line?

A. Yes. It is a good part of their responsibility to point out the various advantages in Firestone, such as the fact that—

Q. May I interrupt you for a second? By "advantages" do you mean advantages to Atlantic or advantages to the dealers?

A. I am talking about advantages to the dealer.

Q. Thank you. I am sorry to have interrupted you.

2679 A. He may point out to the dealer the various advantages, such as the fact that Firestone is a nationally advertised brand, that it has a great consumer ac-

ceptance; that the consumer actually in many cases demands Firestone, making it very easy to sell. Firestone's quality is excellent, which means that there is very little complaint from a defect or inferior merchandise standpoint. The delivery points are kept to a minimum because they have supply points which are adequate to handle cities such as Baltimore. The prices are competitive.

Q. Is that in general the summary of the Firestone advantages to the dealers which your sales personnel are expected to suggest?

A. Yes. They are some of the advantages that our people would point out.

Q. In your district on what specific occasions are these matters pointed out to dealers or prospective dealers?

A. Well, they are pointed out in the very beginning at the interview that the salesman would have with a prospective dealer applicant. Then of course they are pointed out again when the sales supervisor and the salesman together interview the applicant, and when I interview the applicant with the supervisor and the salesman of course I will point out these advantages, too.

Q. I think you testified yesterday that in all three 2680 of those interviews with Atlantic "no forcing" policy was also explained.

A. Oh, yes, sir.

Q. Have your salesmen any responsibilities or duties, or do they make any effort with respect to the actual taking of orders from dealers for Firestone TBA?

A. Yes, our salesmen take a good many orders from their dealers. Of course, as they go into a station to call on a dealer they would check his stock. They use a minimum inventory stock list which they would check and use to make fill-in orders to see that the dealer had a minimum stock of the items that he wanted to carry.

Q. By "he" who do you mean?

A. The dealer. They would phone in orders that a dealer would give the salesman as he called on them.

Q. When you say "phone in", phone in to whom?

A. They would phone the order that the dealer would give our Atlantic salesman to the Firestone store for filling and delivery.

Q. Are there in the course of the year a substantial number of orders thus placed by telephone by your salesmen?

A. Yes. Our salesmen I think constantly make telephone orders to the Firestone stores.

Q. Are those telephone calls made frequently or usually on pay telephones?

2681 A. Yes. Almost all dealer stations have a pay phone in them, and of course that is the phone that our salesman would be using.

Q. Do the salesmen include the cost of such telephone calls on their expense accounts?

A. Yes, sir, they do.

Q. And do those expense accounts go across your desk for your approval?

A. Yes, sir, they do.

Q. So that you know from such expense accounts that such telephone calls are made in substantial number?

A. Yes. I have questioned some of them and found from the salesman that they do make a substantial number of calls for the dealer or on the dealer's behalf to the Firestone store in calling in orders.

Q. You referred a moment ago, Mr. Hathaway, to the ability of your salesmen to check the stock of a dealer. By "checking stock" do you mean observing from the TBA on display what is or what is not there?

A. Well, they would check his stock to see what items he had that he may be selling, and when they get down to a certain level the dealer has agreed that at that level he

would like to have his stock replenished. The dealer-salesman or the promotable salesman then would take note of what was needed in the station, discuss it with the 2682 dealer, and then if the dealer wanted to order it he would either call the order to the Firestone store or take it to the Firestone store to get the order filled.

Q. That same opportunity or privilege is equally available to any salesman for any company who comes in and looks at the dealer's stock?

A. Yes, I believe many competitive salesmen do just about the same thing. It is good salesmanship.

Q. Do your salesmen ever call on Atlantic dealer accounts in company with Firestone salesmen?

A. Yes. That is a regular procedure. The Firestone salesman and our salesman double-team in calling on Atlantic accounts. It is good, I think, for our salesman as well as for our dealers. They get first-hand information of the different products that are available and learn how they are used and installed and learn of new products that may be available and just what makes them saleable, how you would promote them and sell them.

Q. Do your salesmen on their calls use their own automobiles?

A. Yes, they do.

Q. Does Atlantic give them some kind of a mileage allowance for the use of their cars on business?

A. Yes. They have a flat allowance, a monthly allowance. They are also paid 3½ cents a mile for mileage that they do on company business. We also pay them or 2683 provide for them a liability and property insurance policy.

Q. To what extent in the use of the automobiles to which you have referred do salesmen go to the Firestone stores for the dealers to actually pick up fill-in orders for

them? Is that a common occurrence or does it rarely happen?

A. I would term it as a frequent occurrence.

2684 Q. What, if any, service do your Atlantic people render to Firestone in connection with their own service and deliveries to your dealers?

A. Of course our salesmen will discuss with Firestone a better delivery schedule to more adequately serve and give quicker service to the Atlantic stations. They try to eliminate dealer complaints which may occur because the dealers don't get service as quickly as they think they should. So that it becomes a part of our salesman's job to talk to the Firestone manager of the store if he is the one who is scheduling the deliveries, to try and speed up deliveries, make them more efficient, give better service, in other words, to our dealers.

Q. Mr. Hathaway, do you find that in the selection by your dealers of the items of TBA they carry that they require assistance or advice with respect to salability?

A. Yes. A lot of inexperienced dealers, in particular, are apt to buy things that they just aren't able to sell, or certainly are slow moving items, and they might have a good bit of their money tied up in such stock. So that our salesman would advise them on items that they know through their own experience are items that will move fast, that the dealer will make money on and that they won't have tied up on their shelf until they become shop-worn or just plain unsalable.

Q. Have your dealers been trained in TBA salesmanship?

2685 A. Our dealers are trained a great part by our own people. Our salesmen, our service salesmen will train them and teach them to sell TBA, as we term it, on the drive-way or in the lube bay, how to approach a customer, how to point out what the customer needs, and then how to ask the customer to buy.

Q. What, if any, service do your salesmen render to Firestone in connection with promotions of TBA items? Do they suggest promotions to dealers to cooperate with Firestone in any manner when that company is desirous to run some sort of a promotion?

A. From time to time, Firestone has promotional materials and aids which are available to your dealers. Our salesmen would know of these and would present them to the dealer and suggest that he use them, help them set up a promotion in which he would use these materials; develop some sort of ideas and schemes of promoting various items with these promotional aids that are available.

Q. Does Firestone, from time to time, bring out new TBA products?

A. Oh, yes.

Q. What, if any, assistance do your Atlantic salesmen render to Firestone on such occasions?

A. Well, I think in particular to the recent dry-charge battery that was brought out, which was new to the industry and which took some explaining to the dealer, 2686 our salesmen got the first-hand information from

Firestone and then went right into the station and explained the whole thing to our dealers, what it was made up of, how it was made, how you added the electrolyte to charge it, installed it.

And the same thing on these tubeless tires, when they came out of course they were a new item. There were different methods used to install them on a wheel. You had to take them off the rim a little differently. All of that stuff had to be taught our dealers in order that they could handle and service these things properly.

Q. What, if any, advertising assistance does Atlantic render to Firestone in your district?

A. I am not sure I understand your question.

Q. Do you in your district, Mr. Hathaway, have any

kind of cooperative advertising program or plan with the Firestone Company?

A. Our dealers have a cooperative advertising plan with Firestone.

Q. But Atlantic and Firestone do not?

A. We would cooperate with the dealer. As far as cooperating with Firestone, if that is your question, I am sorry I just don't know of it.

Q. Do the dealers, from time to time, make arrangements with Firestone for the advertising of Firestone products?

A. Yes. Firestone has a regular cooperative advertising program which is available to dealers.

Q. And under that program do dealers perhaps push their own ads in newspapers and that kind of thing?

A. Yes. They will place their own ad in a newspaper or they might use a flyer handout, or they could use radio.

Q. Do you know whether your dealer salesmen do or do not help the service station operators in connection with such ads?

A. Yes, they do. They help them quite often, whenever the dealer feels the need of using Firestone's cooperative advertising, which is a good item and one that they should use to help their own business; our salesmen will pitch right in and help the dealer set up the ad, suggest copy, line it up with the newspaper, go to the radio station either with the dealer or alone and set the thing up in any way that they can help the dealer.

Q. Does the Firestone Company, from time to time, have dealer meetings in your district?

A. Yes, they do. They have them quite often.

Mr. Kelaher: Did you ask about Firestone?

Mr. Thompson: Yes.

By Mr. Thompson:

Q. Do your salesmen sometimes themselves attend those meetings?

A. Yes. Every time they have a meeting, I would 2688 say, our salesmen almost always attend.

Q. Do they or do they not sometimes try to pick up dealers and take them along?

A. That is a regular practice. Our salesmen would pick up their dealers and drive them down to the meeting. Usually a bunch of the dealers in the salesman's territory will all go together and the salesman is normally the chauffeur.

Q. Do you have in your district what is sometimes called a service station clinic in which Firestone participates with Atlantic?

A. Yes. If there is a new item, or it might be a better explanation of old items, Firestone will join with our sales people in a service station and try and teach on the spot the difference in the new product or different ways of selling some of the older and established products.

Q. You have testified, Mr. Hathaway, that your annual commission under the Firestone sales plan runs around \$20,000 a year. Is my recollection correct?

A. Approximately, yes, sir.

Q. Based upon your experience in preparing expense budgets for sales operations, if Atlantic did not perform the services to Firestone which you have described, in your opinion would it cost Firestone more or less than \$20,000 a year to supply the same sales services to your dealers?

Mr. Kelaher: Objection, your Honor.

2689 Hearing Examiner Kolb: The objection will be overruled.

Mr. Kelaher: He is asking, as I understand it, what the cost would be to Firestone, not to Atlantic, you understand.

Mr. Thompson: That's right. I am asking his opinion as an expert in money.

Mr. Kelaher: He is asking his opinion as to what the cost would be to Firestone if the services weren't being performed. How would he be in a position to know that?

Hearing Examiner Kolb: I have ruled on the objection.

A. In my opinion it would cost Firestone more than \$20,000 to perform the same services that our people, all of them, perform in promoting and selling.

2690 By Mr. Thompson:

Q. I want to shift to a different subject and ask you what factors are considered by you when a dealer lease comes up for renewal?

A. Well, the factors are the gallonage of the station; the appearance, in other words the housekeeping condition and the rest rooms; the service that the dealer performs to his customers; and of course his economic situation.

Q. By which you mean whether he does or doesn't pay his bills to Atlantic?

A. That is right, whether he does or doesn't pay his bills.

Mr. Kelaher: What was the first two that he gave?

(The reporter read the answer.)

By Mr. Thompson:

Q. Upon such occasions when leases come up for renewals, do you or do you not consider as a factor what brand of TBA the dealer is selling?

A. No, sir, it has nothing to do with lease renewal.

Mr. Thompson: May I have a moment to make a reference to the record? I have a specific question I want to ask Mr. Hathaway.

By Mr. Thompson:

Q. Mr. Hathaway, while my associate, Mr. Freed, is looking up a specific reference for me, I would like to ask you another question.

Have you, in your experience with Atlantic as a 2691 district manager, ever cancelled any dealer's lease because he didn't buy sponsored TBA?

A. No, sir.

Q. Have you ever refused to renew a lease for TBA reasons?

A. Never, sir.

Q. Mr. Hathaway, have you ever heard of a man named Eugene Savage, who is a salesman for the Burke-Savage Company in Baltimore?

A. Only in connection with these hearings.

Q. During the course of his testimony, and on cross-examination, at transcript reference 1822, Mr. Savage said, volunteering this information: "I just thought of another Atlantic station which I sold tires to."

And I said, "Good, good. Which one?"

And he replied, "It was Jerry's Atlantic. Then it turned into Joe's Atlantic. And then he got thrown out."

And I said, "For buying your tires?"

And Mr. Savage said, "He definitely told me he got thrown out for buying other people's products, besides the products coming from the oil companies."

Then that station was identified by Mr. Savage as Joe's Atlantic on Eastern Avenue.

Can you, from that information, identify that station and the former proprietor?

A. The only Joe's Atlantic on Eastern Avenue 2692 would have been Joe Hackett, at Eastern and Marlyn.

Q. Is that the station which at one time was operated by somebody called Jerry Brenner?

A. Yes, sir, that is it.

Q. Was Joe Hackett a former lessee of Atlantic Refining Company at the station to which you referred?

A. Yes, he was.

Q. Were you the district manager at the time he left that station?

A. Yes, sir.

Q. Do you know the circumstances of him leaving the station?

A. Yes, sir.

Mr. Kelaher: Mr. Examiner, I wonder if we can have some specificity with respect to dates?

By Mr. Thompson:

Q. Do you recall approximately—

Mr. Kelaher: I object unless we have more specific dates.

Mr. Thompson: You don't even let me finish a question, Mr. Kelaher.

Mr. Kelaher: I think I probably listened to your objections quite a while.

He has been a manager for a few years. I think we should have some dates.

Mr. Thompson: There was a question under way at 2693 the time when I was most recently interrupted by Mr.

Kelaher. How did it start, Mr. Reporter?

(The reporter read the question.)

By Mr. Thompson:

Q. Do you recall approximately—Mr. Kelaher, my next words would have been—the date when Mr. Hackett departed from this station? I don't mean the specific day. I mean the year.

A. I believe it was 1956.

Q. Or thereabouts?

A. Or thereabouts.

Q. Do you recall the circumstances of Mr. Hackett's departure?

A. Yes, I believe I do.

Q. Would you state them, please?

A. Mr. Hackett, to put it very simply, went broke, asked to be replaced, which we did.

Q. Did he or you initiate the termination of his lease?

A. Mr. Hackett initiated.

Q. Do you know Mr. Varnadore, who testified in this proceeding last Monday in Baltimore?

A. I know him very well.

Q. During the course of Mr. Kelaher's cross-examination of Mr. Varnadore he asked him questions about a new form of lease signed by Mr. Varnadore quite recently.

2694 May I ask, first, whether you recall the approximate date of Mr. Varnadore's new lease?

A. Yes.

Q. When it became effective?

A. Yes, I know when it became effective.

Q. When?

A. June 1st, this year.

Q. What were the circumstances leading up to the change in form of the Varnadore lease?

A. Mr. Wyniger, who is Mr. Varnadore's partner, called me on the telephone and asked if he could come in and talk to me, which he did, and requested that we cancel their present lease, which was a gallonage lease, and gave them a new percentage lease.

Q. Would you briefly explain the difference between the gallonage lease and the new percentage lease?

A. The gallonage lease was based on the gallons, a certain number of cent per gallon, the gallonage volume that a station did during a month, with a minimum, and in many cases with a maximum.

The percentage lease is based on the business that a station does in gross sales volume. We have certain per-

centages against the various—I hope I am saying this so that you understand it—we base our lease rental on percentages of the gross sales volume, with a decreasing percentage which runs from six percent decreasing to three percent.

Q. And starting with what?

A. It starts at the—the first five hundred dollars of gross sales has no rental.

2695 Q. I think it is not necessary for you to continue because this information has already been placed off record by stipulation, Mr. Hathaway.

Would you go on, please, sir, with what happened next about the Wyniger and Varnadore leases. Did Mr. Wyniger come to see you?

A. Mr. Wyniger came to see me and explained that they would like to have the new percentage lease, because their accountant, who also happened to be the accountant for several other Atlantic stations, had figures for them that they would save approximately \$90 per month if they were put on the percentage lease.

We mutually cancelled their present lease and put them on the percentage lease effective June 1.

Q. Has that percentage lease been accepted by a number of your other lessee dealers in the Baltimore area?

A. Yes. Of course it is accepted by every dealer whose lease expires. In several cases, dealers like Mr. Wyniger and Mr. Varnadore have requested the new percentage lease and it has been given them.

Q. Have you made for your district your own personal survey of the impact or effect of the percentage lease against the prior form of gallonage lease and determined whether your lessee dealers are paying more or less rent to Atlantic under the new form of lease?

2697 A. All of our dealers, with the exception of one to date, are paying less rent under the new percentage lease than they paid on the gallonage lease.

Q. Have your dealers commented to you whether they like or dislike the new form of lease?

A. Our dealers, without—let's say, with one exception—have commented that they are very, very much in favor of our new percentage lease.

Q. Mr. Hathaway, I inadvertently omitted one question which I had intended to ask you yesterday.

When one of your leases is, for some reason or other, terminated and a new lessee dealer comes in to take his place, do you have what is sometimes referred to as a check-out?

A. Yes.

Q. What is Atlantic's policy with respect to the advice which you give the incoming dealer on his purchase or refusal to purchase the out-going dealer's TBA?

A. Our advice to the incoming dealer is that he purchase any TBA item which he considers salable from the out-going dealer.

Q. Is that true regardless of brand?

A. Regardless of brand; yes, sir.

Q. And whether or not the out-going dealer has or has not purchased the TBA items from Firestone?

2698 A. That has nothing to do with it. We like the change-over to be as nice and as friendly as possible, so that the incoming dealer can retain some of the out-going dealer's customers; if possible. And if we get into an argument during the change-over, it doesn't help either party.

Q. Do you know Tommy Eckhardt?

A. Yes, sir. Very well.

Q. Were you present in Baltimore, sitting at the council table with me, during his testimony late Tuesday afternoon, in Baltimore?

A. Yes, sir.

Q. Have you ever heard of Jack's Tire Store?

A. In Baltimore? Yes, sir.

Q. That store sells Firestone products, does it not?

A. Yes, sir.

Q. Do you recall Mr. Eckhardt's testimony that up until the time he left Atlantic in 1955 he purchased Firestone TBA from Jack's Tire Store?

A. Yes, sir.

Q. Jack's Tire Store, or whatever the correct name is—Mr. Ballard's recollection is that Mr. Eckhardt described it as "Jack's Tire Service."

Do you happen to have the testimony here, Mr. Kelaheer?

Mr. Kelaheer: I have it in my room.

I believe it is Jack's Tire Service.

2699 By Mr. Thompson:

Q. May I rephrase my question, Mr. Hathaway.

Mr. Kelaheer's records and Mr. Ballard's memory indicate that the name used by Tommy Eckhardt was "Jack's Tire Service" and not "Jack's Tire Store", to which I referred awhile ago.

But whichever it was, during the time Mr. Eckhardt was a lessee, was that—Jack's establishment—one of the Firestone outlets, purchases from which entitled the Atlantic Refining Company to a commission under the Firestone plan?

A. No, sir; it was not.

Q. Does it therefore follow that the Atlantic Refining Company received no commission whatever upon any of the purchases by Tommy Eckhardt from Jack's Tire Service?

A. We received no commissions whatsoever.

Q. On Tommy Eckhardt's Firestone purchases?

A. On Tommy Eckhardt's Firestone purchases from Jack's Tire Service.

Mr. Thompson: Mr. Hathaway, thank you very much.

These are all the questions that I have on direct. I would suppose Mr. Kelaher would want to take a little time before he starts cross-examination.

Or do you want to go right ahead?

Mr. Kelaher: I will go right-ahead. I might say that I knew Mr. Hathaway was coming, but I didn't know 2700 the scope of his examination. So I would like to proceed for awhile and then have an opportunity to refresh myself on what he testified this morning, and then continue with the examination, if that is all right.

Hearing Examiner Kolb: We will recess now.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Kelaher.

Q. Mr. Hathaway, I believe you were present at the hearings in this matter, Docket 6486, that were held in Baltimore, isn't that correct; at the hearings held in 1957 and those held in 1958?

A. Yes.

Q. Did you attend any other hearings in this matter in other areas?

A. No, sir.

Q. And have you read the complaint in this matter, the complaint in Docket 6486 directed against the Atlantic Refining Company?

A. No, I haven't read it.

Q. When you became Baltimore District Manager in April, 1954, you knew that the Federal Trade Commission had attorneys in the Baltimore district in connection 2701 with Atlantic's sponsorship of Firestone TBA; isn't that correct?

A. No, it is not.

Q. Did you learn soon after that that the FTC attorneys were in the Baltimore area?

A. No. I didn't know anything about that until just before these hearings started.

Q. - At the Baltimore hearings that were held this week, on Monday and Tuesday, signed statements were produced which were in the files of the Atlantic Refining Company taken from Atlantic dealers as far back as March, 1953.

Do you say now that you don't know that the Federal Trade Commission was conducting an investigation into the Firestone TBA at that time?

Mr. Thompson: He didn't say that.

That is a distortion. All he said was that he didn't know they were doing it in Baltimore. He didn't say he didn't know they were doing it elsewhere.

Mr. Kelaher: Let's have the question read.

(Question read.)

A. I did not know until a good while after I had come to Baltimore that there were any such statements taken.

By Mr. Kelaher:

Q. In view of your answers I am going to ask you this question: You have been with Atlantic since 1939 in one capacity or another, haven't you?

2702 A. That is correct.

Q. Didn't you know before you arrived in Baltimore that the Federal Trade Commission was investigating Atlantic's tie-up with both the Goodyear Tire and Rubber Company and with the Firestone Tire and Rubber Company on TBA?

A. I may have heard it, Mr. Kelaher, but I don't recall it, no.

Q. Isn't it a matter that would be discussed among Atlantic personnel?

A. Not particularly.

Q. And were you aware that a complaint issued against Atlantic Refining Company in January, 1956, charging them with violations of Section 5 of the Federal Trade Commission Act because of their tie-ins with Goodyear and Firestone on TBA?

A. I imagine I heard it but certainly I cannot pinpoint the date or anything like that.

Q. You certainly have been aware of this. It is very difficult for me to sit here and believe that you haven't heard of this investigation or proceeding at some time during your career with Atlantic Refining Company.

A. I have been very much aware of it in the last year.

Q. And prior to that you knew about it, isn't that correct?

A. Possibly, but I didn't give it too much thought.

Q. Yesterday you testified with respect to the 2703 number of gasoline retailers in the Baltimore district, as you will recall.

A. Yes.

Q. I would like to ask you some questions about those figures, mainly for the purpose of clarification.

You stated that in the Baltimore district there were, as I understood your testimony, 2200 or 2300 gasoline retail outlets. Is that correct?

A. Yes, I said that.

Q. In the first place, would you define what you call a gasoline retail outlet?

A. It is a place that sells gasoline at retail.

Q. Could you give us any further description than that? What type of a place, for example?

A. It could be a service station, it could be a grocery store, it could be a garage, it could be a new car dealer.

Q. So it would include various types of retail outlets.

Breaking that figure down, as I understood your testimony, there were approximately 1000—you testified there

were approximately 1200 or 1300 service stations; is that correct, in the Baltimore district?

A. Approximately, yes.

Q. And of that number approximately 1000 were described by you as real service stations. What is your distinction between that 1000 and the remaining 200 2704 or 300 service stations?

Mr. Thompson: I don't recall that testimony, Mr. Kelaher. I think, sir, your note is in error.

By Mr. Kelaher:

Q. Didn't you refer to certain service stations as real service stations?

A. That's right.

Mr. Kelaher: He testified to that. He just stated it.

Mr. Thompson: My notes—may I tell what my notes recall?

Mr. Kelaher: I will bring it out from the witness.

Mr. Thompson: You are confused between the metropolitan Baltimore area and the Baltimore district, which are two different geographical locations.

Mr. Kelaher: I am aware of that.

Mr. Thompson: I tried to keep that clear on the record. Maybe I didn't.

Mr. Kelaher: I am aware of that.

By Mr. Kelaher:

Q. With respect to your 2200 or 2300 retail outlet figure, which did that relate to, the Baltimore district or the metropolitan area?

A. That would be the district.

Q. What did your 1200 or 1300 figure relate to?
2705 You stated there were 1200 or 1300 service stations, as I recall.

A. Didn't I say 1200 to 1300 retail outlets in metropolitan Baltimore?

Q. In the metropolitan Baltimore area.

Of that number you broke that down, as I understand your testimony, and stated that of that number there are approximately 1000 which you designated real service stations; is that correct?

A. In the metropolitan Baltimore area?

Q. Yes, in the metropolitan Baltimore area.

A. Yes.

Q. What is your definition of a "real" service station?

A. It is a service station that can dispense gasoline, has lubrication facilities, washing facilities, can handle TBA, installation of TBA, and do many of the services that an automobile customer expects or can have done to his automobile.

Q. And such a class of service station would be potential TBA outlets, would they not?

A. Yes, sir.

Q. That leaves, in that category, 200 or 300 stations which you did not define. But I would like to ask you to state a little more definitely what would be in that group.

A. That would be the retail outlet that was not a real service station, such as a grocery store, possibly a garage, a car dealer.

2706 Q. Would they be what are sometimes referred to as "filling stations" as distinguished from a service station?

A. No. I wouldn't refer to them as filling stations.

Q. Would these be potential TBA outlets?

A. No, I wouldn't think so.

Q. In the metropolitan Baltimore area, are the bulk of those stations, you have referred to, lessee stations?

A. I would assume they are lessee, for the most part.

Q. Referring again to the metropolitan Baltimore area, you stated that your Company, Atlantic, is in competition

with a number of other major oil companies; is that correct?

A. That is correct.

Q. And you stated about 11. Does that apply to the metropolitan Baltimore area? Are there that many major competitors?

A. Yes, it would apply to metropolitan Baltimore.

Q. And who are your principal competitors in metropolitan Baltimore area?

A. Esso, Amaco, Sinclair, Sun, Texaco, Shell, Crown, Socony.

Q. Do you consider Crown a major or an independent?

A. I consider it a major in metropolitan Baltimore.

Q. But it is not a national company, is it, or do you know?

A. They certainly market in other places besides Baltimore.

Q. Go ahead.

2707 A. Tydol, Calso.

Q. And in addition, you have some independents, or did you name them all?

A. Oh, no; there are a number of independents.

Q. In view of your last answer, to the effect that you have these major competitors and independents, it would appear that Atlantic shares as substantial a share of the market as any of the other companies; is that pretty much so?

A. I don't—I am not quite sure I understand what you mean by a "share".

Q. You say you have 1200 or 1300 stations in metropolitan Baltimore area. They are divided among Atlantic and these other companies apparently?

A. Yes:

Q. How would Atlantic rank insofar as the number of service stations is concerned?

A. Some companies would have more and others would have less.

Q. However, Atlantic is one of the principal companies in the metropolitan Baltimore area, is it not?

A. We don't have that big a share of the business.

Q. I am talking about with respect to numbers of outlet stations, service stations.

A. We don't have the least number by any means, nor do we have the most. I wouldn't know how else to answer you.

Q. That is sufficient.

2708 Q. With respect to contract stations, you stated that there were around 60 Atlantic stations. Would that be in the Baltimore district or the metropolitan Baltimore area?

A. That is in the district.

Q. And in the metropolitan Baltimore area, how many contract stations does Atlantic have?

A. In what I defined as metropolitan Baltimore we would have no more than 15.

Q. No more than 15. And are any of those so-called real service stations?

A. I would class two of them as real service stations.

Q. They would be potential TBA outlets?

A. Yes.

Q. And the others would not; is that correct?

A. Yes.

Q. And when you stated on direct, that five or six in the Baltimore district of the 60 contract dealers were real service stations, that would indicate that the five or six were potential TBA outlets and the remainder were not; is that correct?

A. They are real service stations.

Q. And they are potential TBA outlets?

A. Yes, sir.

Q. And the remainder would not be potential TBA outlets; is that correct?

2709 A. That is correct.

Q. In connection with the figures which you have given, are they current figures or as of what period are you talking about? With reference to all these numbers that we have been discussing here.

A. They would be first quarter 1958 figures.

Q. First quarter of 1958?

A. Yes.

Q. And you have reviewed published sources to obtain this information; is that correct?

A. Yes, sir.

Q. You made a reference to the fact that there have been 100 new service stations which have opened in the metropolitan Baltimore area?

A. Yes.

Q. During a particular period. What period was that?

A. 1957 and 1958, up to June.

Q. That would be a period of a year and a half?

A. Approximately a year and a half.

Q. Of that number, how many were new Atlantic service stations?

A. Approximately six.

Q. Approximately six during that same period?

A. Yes.

Q. I am going to call your attention to some
2710 ratios that were developed yesterday, which I have studied with great interest. As District Manager for the Baltimore district, you of course have occasion to examine operating statements, do you not, to show profits and losses of one type or another?

A. No, I don't have any profit statements.

Q. Do you have any accounting background at all?

A. None whatsoever.

Q. Are you familiar with the difference between gross income and net income, or between profit and loss?

A. Without an accounting background I think I know the difference between profit and loss, yes.

Q. That is fine, because I would like to ask you about some of these ratios.

In the first place, you said that the gross commissions on Firestone TBA program in the Baltimore district was approximately \$20,000; is that correct?

A. That is correct.

Q. That was for what period?

A. 1957.

Q. By some slight-of-hand that was related to a figure of \$578,000—

Mr. Thompson: I object to the aspersions on my questioning of this witness. There was no slight-of-hand at all.

2711 By Mr. Kelaher:

Q. A figure of half a million dollars was described as the expense budget. I am going to ask you a few questions about that expense budget.

What does that include?

A. It includes payroll, service station maintenance, terminal maintenance, administrative expenses. Those would be the major.

Q. And that expense item of half a million dollars relates to the operational expense with respect to Atlantic's entire business in the Baltimore district; isn't that correct?

A. Yes.

Q. I assumed it would be.

So the half million dollars was expended in producing income from all sources, was it not?

A. Yes.

Q. The figure of \$20,000 we have established was the income from Firestone TBA in the Baltimore district; correct?

A. Yes.

Q. You have taken that as income, and from that you have deducted an expense figure of \$578,000, or over a quarter of a million dollars.

A. That is mighty deep.

Q. I am asking you what this is intended to prove.

Mr. Thompson: I object to the form of the question. The witness has done no such thing.

Mr. Kelaher: I will put it another way.

By Mr. Kelaher:

Q. The question you were asked was this: What was the relationship of \$20,000 to \$578,000, and it turned out to be about four percent. Do you remember that figure?

A. Yes.

Q. What is the significance of the 4 percent?

A. The significance is that the TBA commissions—it merely points up that this is a definite side-line with the Atlantic Reining Company.

Q. How does it point up it is a definite side-line when you are taking an expense pertaining to your entire company operations and applying it to your income from TBA only? I don't get the significance of your statement. I am just trying to show that it is not a fair comparison. Do you still think it is?

A. I think it is a good comparison.

Q. All right, we will let it stand there.

Now, I would like to ask you about another ratio which was developed on your direct examination, which also intrigues me.

You referred to a gross sales figure of \$8,000,000?

A. Yes, sir.

Q. What is included in that gross sales figure?

2713 A. That would include the gasoline, motor oil, burning oils, antifreeze, industrial lubricants, industrial chemicals, washes, anything that Atlantic sells in petroleum.

Q. That is from all sources that you could think of?

A. Yes.

Q. Mr. Thompson asked you some questions which related to \$20,000 income from TBA, from Firestone TBA commissions, to the \$8,000,000, and you came out with a very minor percent amounting to one-quarter of one percent; do you recall that figure?

A. Yes, I do.

Q. I don't know whether you realize what you have done, but I am going to take you through this a little bit.

Hearing Examiner Kolb: The quarter of one percent was Mr. Thompson's figure.

Mr. Thompson: Was I wrong?

Mr. Kelaher: His computation is accurate, but the procedure is quite intriguing.

2714 By Mr. Kelaher:

Q. What you have done here, as I understand your testimony, both on direct and now on cross, is to take a gross sales figure of \$8,000,000 from which you have made no deductions whatsoever—and I assume you pay something for your gasoline and your other products—

A. I am sure we do.

Q. Which would be quite a sizable figure running into the millions, would it not?

A. It should be.

Q. It should be is correct. And you have taken a gross income figure of \$8,000,000, to which has been related an income figure of \$20,000 from TBA, which does not have deductions other than some which have not been so far

itemized, but in effect you have taken a gross sales figure and related it to what amounts to almost a net income figure. Do you think that is a proper comparison?

Mr. Thompson: I object to the form of the question. The \$20,000 commission is not a net figure at all, and Mr. Kelaher knows it.

Mr. Kelaher: The \$20,000 figure—

Mr. Thompson: I object to your characterization of the \$20,000 as a net figure.

Hearing Examiner Kolb: I think the witness testified this morning that on that \$20,000 figure you would have to take into consideration the sales expense on the part of the salesman in promoting the sale of the TBA.

Mr. Kelaher: I mentioned that in my question. I said it was subject to certain deductions which have not as yet been itemized.

But the \$8,000,000 figure I say—I am asking if it is an unfair comparison to take a figure of \$8,000,000 before deducting the cost of gasoline, petroleum products, and numerous other expenses—in other words, the cost of manufacture, sale and delivery—and comparing that with a figure of \$20,000 which has no cost of manufacture, no cost of delivery, and just some minor selling expenses.

Mr. Thompson: That is objected to. There wasn't any testimony that these were minor selling expenses.

Mr. Kelaher: We will strike the word "minor" at this point, and we will develop that later.

By Mr. Kelaher:

Q. I am asking you, in your opinion, is that a fair comparison?

A. I think it is a fair comparison.

Q. Why?

A. Because I think again it points out the gross sales

that we enjoy in Baltimore on our petroleum products versus the very small gross commission that we get from Firestone, and again simply points out the fact that 2716 we are so much more interested in the sales of our petroleum products, that our TBA is very much of a sideline.

Q. You keep saying about your gross sales of TBA being insignificant. Isn't it a fact that the sales of Firestone TBA in the Baltimore district aggregate in the neighborhood of a quarter of a million dollars a year?

A. Yes.

Q. That is correct, isn't it?

A. Yes.

Q. So when you keep referring to a \$20,000 figure, it is actually your commission, it is not a sales figure?

A. But all I am interested in from Atlantic is the gross commission.

Q. But you still, as I understand your answer, figure that this was a valid comparison?

A. Yes, sir.

Q. I will let it stand at that.

In your testimony you also referred to the fact that you have a sales supervisor and various classes of salesmen. To bring the record up to date, would you give us the name of your current supervisor?

A. Mr. E. B. Munch.

Q. And your promotable dealer salesmen, you have four promotable dealer salesmen. Would you give us their names?

A. Mr. R. D. Thomas, R. R. Goudey, and W. C. 2717 McGee, and E. H. Williams.

Q. I will show you a list appearing in the transcript at Page 419 and ask you if the service salesmen and general salesmen's names have changed since June 1957.

Would you just state? Maybe it would be easier to give

us the names of the current general salesmen and the current service salesmen.

A. Gilbert Moran, W. R. Simpson III, Arthur Hendley, and Donald Hactel.

Q. And they are what?

A. They are service salesmen.

Q. And you also have three general salesmen; is that correct?

A. We have five general salesmen.

Q. On direct examination you stated that promotable dealer salesmen call on lessee dealers only; is that correct?

A. Yes.

Q. Also, on direct examination you referred to the fact that you are interested in what you refer to as a good dealer to operate your service stations.

A. I certainly am.

Q. And you also stated that the income of a good average dealer would range from \$10,000 to \$15,000, in some instances a dealer would have an income of \$25,000.

A. Yes.

Q. Isn't TBA included in that income?

2718 A. Oh, sure.

Q. And isn't it an important source of income to the dealer?

A. Yes.

Mr. Kelaher: Mr. Examiner, at this time I would like to have an opportunity to review the witness' examination earlier this morning. This may be a good time to adjourn until two o'clock.

Hearing Examiner Kolb: Do you have any other witnesses?

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: Then we can take the next witness until 12:30.

Mr. Kelaher: Adjourn until 12:30 for the next witness?

Hearing Examiner Kolb: Yes, unless there is objection.

Mr. Thompson: On that basis shall we go right ahead with the next witness now?

Hearing Examiner Kolb: Yes.

Mr. Ballard: May we have a recess before we take the next witness to figure out who it will be?

Hearing Examiner Kolb: Yes.

(Witness temporarily excused.)

(A short recess was taken.)

2719 Hearing Examiner Kolb: The hearing will come to order.

EDWARD B. MUNCH was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Ballard.

Q. Mr. Munch, will you state your name for the reporter?

A. Edward B. Munch.

Q. And will you state your home address?

A. 202 Charmuth Road, Lutherville, Maryland.

Q. What is your present position with the Atlantic Refining Company?

A. Sales supervisor, Baltimore district.

Q. Could you briefly outline your previous positions? I believe you have a memo you made of the dates. You can use that to refresh your recollection and tell us the dates and positions that you have held.

A. I was employed on August 12, 1940, and until January 8, 1943, was tire salesman for the Atlantic Refining Company.

From January 8, 1943, to September 25, 1945, military service.

September 25, 1945, to October 20, 1947, tire salesman.

October 20, 1947, to April 20, 1950, TBA salesman.

2720 April 20, 1950, to June 4, 1951, Richmond sales supervisor.

June 4, 1951, to December 7, 1957, sales training coordinator, Southern region.

From December 7, 1957, until now on my present assignment.

Q. Mr. Munch, referring to your tour of duty as training coordinator for the Southern region, what were your duties and responsibilities in that position?

A. To coordinate all training in the Southern region, which included the training of company personnel just coming with the company, as well as prospective dealers for service stations.

Q. Where was that training done, sir?

A. In the last several years in Charlotte, North Carolina.

Q. Is there a permanent school there?

A. The school was given a permanent location with a class room and training stations in Charlotte, North Carolina.

Q. Do Atlantic dealers who are to be trained from the various districts in the Southern region all go to that school?

A. Did you say dealers?

Q. Dealers who are to be trained, yes.

A. From Baltimore to Miami, all go to that school.

Q. When a new man is taken into the sales department of Atlantic, does he go to that school?

A. The first day of employment with the company is the day that he enrolls in the school.

Q. And the dealers and the company's sales trainees go to the same school?

A. They take the first training program together.

Q. In the same classes?

A. Same classes.

Q. Is that school a five-week program?

A. That is a five-week school.

Q. Now, sir, in that school is Atlantic's "no forcing" TBA policy presented to the students?

A. On Wednesday of the first week of the school the trainees receive the orientation on TBA where they tell the dealers and the trainees the value of selling TBA, and then explain Atlantic's TBA policies and programs to them.

Q. Did you yourself give that course in that school occasionally?

A. On quite a few occasions.

Q. And when you did that did you explain the policy to the trainees under your charge?

A. Every instructor has a script to follow, and in that it is a must that we read a letter written by Mr. Colley to all the dealers in 1951 when we went on our present TBA program, stating the reasons behind it, and also pointing out very vividly that it is theirs to accept or reject, that it is in no way compulsory.

Q. In your more recent experience in the Baltimore district, have you found that policy to be carried out in practice?

A. The policy is carried out in practice in the Baltimore district.

Q. You have salesmen under your charge in the Baltimore district, is that not a fact?

A. Yes.

Q. You are in charge of salesmen?

A. Yes.

Q. Do your salesmen explain that policy to the new Atlantic dealers as they are recruited?

A. They explain that to the prospect during the recruiting period. Then if he impresses the salesman he is brought

in to my office, or I on occasions will visit the prospect at his home, where again I point out to him once the screening is complete and we have decided on the likely prospect, we take them in to Mr. Hathaway, and he again explains our program.

Q. Does his explanation include a statement of the "no forcing" policy?

A. We all use that same approach.

Q. I am not quite sure. I may have covered this point.

When you discuss it with dealer recruits, do you explain the policy to them?

A. Yes.

Q. And you see that your salesmen do?

A. Oh, definitely.

Mr. Ballard: I have no further questions of Mr. Munch. Doubtless Mr. Kelaheer will have a few.

Cross-Examination by Mr. Kelaheer.

Q. Mr. Munch, I listened to your direct examination and your direct testimony, and I haven't heard either counsel or you make reference to the brand of TBA which you sponsor in your region. I think the record probably should show that. You were the sales training supervisor, is that right?

A. Coordinator.

Q. Of the Southern region?

A. That is right.

Q. Now would you tell us what brand of TBA you were referring to during your testimony?

A. As I said, we first impressed the trainees with the value of selling TBA, and did try to sell them Firestone.

Q. You didn't assume your present assignment as sales supervisor in the Baltimore district until September 2, 1957, is that correct?

A. No. December 4, 1957.

Q. December 4, 1957?

2724 A. That is right.

Q. And your assignment began as sales supervisor in the Baltimore district at that time?

A. It is still the same thing.

Mr. Kelaher: No further questions.

Mr. Ballard: I have no further questions.

(Witness excused.)

Hearing Examiner Kolb: We will adjourn until two o'clock.

(Thereupon, at 12:15 p.m., the hearing was recessed, to reconvene at 2:00 p.m., this day.)

2725

Afternoon Session.

2:00 p.m.

Hearing Examiner Kolb: The hearing will come to order.

You may proceed.

Mr. Kelaher: May we recall Mr. Hathaway to the stand, please?

HOLLAND M. HATHAWAY resumed the stand and, having been previously duly sworn, testified as follows:

Cross-Examination (resumed) by Mr. Kelaher.

Q. Mr. Hathaway, how do your service salesmen promote Firestone TBA, if at all?

A. I don't think my service salesmen have much to do with promoting Firestone TBA except as they may work under the direction of a salesman in a particular location in which they happen to be working.

Q. Yesterday, and I think this may have been inadvertent, on your direct examination your attention was called to the fact that there were 16 employees who you stated had direct responsibility with respect to promoting Firestone TBA, and included in those 16 were four service salesmen.

Is that correct?

2726 A. Yes.

Q. You recall that statement?

A. Yes, sir.

Q. And you stated that the service salesmen, in fact all 16, as I understood your testimony, spent from ten to twenty percent of their time promoting Firestone TBA. Would that be true of service salesmen?

A. They would do a lot of the teaching and the training and handling of Firestone TBA items, and teaching the dealer and the dealer's employees. Of course they are constantly teaching service, installation and that sort of thing of the Firestone TBA item. They don't take orders or that type of thing the way the salesman does. But in the installation, training, teaching and all, they would be spending a good bit of their time on that basis.

Q. However, that wouldn't be classed as promoting Firestone TBA. They are more in the nature of salesmen who teach them how to perform services of one type or another, and they may use Firestone TBA in doing that. But they are not really promoting Firestone TBA with their dealers, are they?

A. Well, they do assist the salesman in great measure, the salesman's job, in promoting the TBA. So I do think that they are in many ways promoting the sale.

Q. They are promoting the sale of TBA, but are you referring to all TBA or Firestone TBA?

2727 A. I would have to refer to both Firestone TBA and non-Firestone TBA.

Q. TBA in general?

A. TBA.

Q. So that your figure of ten to twenty percent of their time might be slightly high, or might be high, would you think, with respect to promoting Firestone TBA?

A. No, I don't think I would want to change that figure in their case.

Q. Does your same answer hold true with respect to the other twelve employees, including yourself, that you referred to yesterday with respect to that ten percent or twenty percent figure?

A. Yes, sir, I believe it would.

Q. I will come back to that in a little while. At this time I want to go into another subject.

You were asked on direct examination this morning to state the advantages to Atlantic of an Atlantic dealer handling Firestone TBA. Do you recall that question?

A. I honestly don't quite recall it. I said so much up here.

Mr. Thompson: I think the question was asked yesterday, Mr. Kelaher. That may be the confusion.

Mr. Kelaher: No. I have it in my notes as of today.

2728 Mr. Thompson: It must be true then if you have it in your notes. A similar question was asked yesterday with respect to the training of Atlantic personnel which may have caused the confusion.

By Mr. Kelaher:

Q. One of the reasons you gave on direct examination as to why it is to Atlantic's advantage for a dealer to handle Firestone TBA is because Firestone is nationally advertised. Do you recall that?

A. Yes. I know that is an advantage.

Q. Do you recall saying that.

A. It seems to me that we were talking about what Atlantic salesmen do to promote Firestone TBA.

Q. This is another topic. We are talking about the advantages to Atlantic of Atlantic dealers handling Firestone TBA, and you gave what amounts to a five-point answer. I can refresh your recollection on it if you wish.

A. I wish you would.

Q. First, you said that Firestone is nationally advertised; second, you said that Firestone has consumer acceptance and, as I understood you, customers in some instances actually demand Firestone; Firestone quality is excellent—I am not using your exact words, but I have the substance of what you said—and the next one is that delivery points are kept to a minimum; and next, that prices are competitive on Firestone. Do you recall that testimony this morning?

A. Yes, but I don't recall it in response to the question that you are asking me.

Q. Do you think there are advantages to Atlantic of Atlantic dealers handling Firestone TBA?

A. I certainly think there are advantages to the dealer, and if there are advantages to the dealer then of course they would be advantages to Atlantic.

Q. In your opinion there are advantages to both?

A. Yes, sir.

Q. Let me ask you this: Why is it more advantageous to a dealer to handle a Firestone TBA than any other nationally advertised TBA, such as Goodyear, for example?

A. I couldn't very truthfully say that there wouldn't be advantages for a dealer handling Goodyear.

Q. Or/and other nationally advertised brand?

A. I am interested in Firestone. And because I am interested in Firestone I just think it is better.

Q. However, you stated it was an advantage to the dealer to handle Firestone—

A. I think.

Q. —TBA. Wouldn't it be just as advantageous for him to handle some other brand?

A. In our market in Baltimore Firestone seems to have the best acceptance and therefore in our opinion—2730 in my opinion it has the best advantage to the dealer.

Q. Isn't it true that Goodyear, US, Goodrich, and many other national brands are nationally advertised and sold in Baltimore?

A. Oh, yes. Everything seems to be sold in Baltimore.

Q. Isn't it true that many dealers might think that it would be to their advantage to handle one of those other brands?

A. If they do, then they are free to handle them.

Q. You state that another advantage to the dealer—of course you say they are free to handle them but in your opinion it would be to their disadvantage to handle them; is that correct?

A. No, I wouldn't say that at all.

Q. Fine. You also state that another advantage to the dealer is that Firestone has consumer acceptance and that there are requests for Firestone. Isn't it true that other brands of tires, including Goodyear, also have consumer acceptance?

A. It certainly is.

Q. Isn't it true that customers demand other brands of tires other than Firestone?

A. I am sure they do.

Q. Isn't it true also that at one time Atlantic thought that Lee tires were better for their dealers, and Exide 2731 batteries, than any other brands; isn't that correct?

A. We used to sell them.

Q. Isn't that correct? Wasn't that the reason that Atlantic sponsored Lee-Exide, because they thought it was better for their dealers?

Mr. Thompson: If you know, Mr. Hathaway.

Mr. Kelaher: He was with the organization at the time.

A. I can't state that they thought they were better.

By Mr. Kelaher:

Q. But they thought it would be more advantageous for their Atlantic dealers to handle those products, did they not, than other products?

A. I can't tell you that.

Q. You can't answer that question?

Let's see now. You also said that it was advantageous to Atlantic dealers to handle Firestone TBA because of the quality. Isn't it true that there are other brands of tires, batteries, and accessories which also are of like grade and quality as Firestone?

A. I know the Firestone quality because I see a lot of them, and therefore that is why I can truthfully recommend them.

Q. But you are in no position to say that there aren't other tires, batteries, or accessories which are not of 2732 equal quality, are you?

A. No, I am in no position to say that.

Q. You also made the statement yesterday, which is one of the ones that Mr. Thompson had reference to, I believe, that you thought it was advantageous to an inexperienced dealer not to have "droves of jobber salesmen calling on him." Do you recall that?

A. Yes.

Q. So in your opinion you prefer—Atlantic, rather, thinks it is to a dealer's advantage not to have jobber salesmen calling on Atlantic stations; is that correct?

A. Not to have droves of jobber salesmen calling on them.

Q. How would you limit it then? Are you in favor of having some jobber salesmen and not others?

A. I think every dealer would have some jobber sales-

men calling on him, certainly. Drove of jobber salesmen calling on them certainly in my opinion is not an advantage for a dealer.

Q. But you don't deny the right of a jobber salesman to call on any businessman that he cares to, do you?

A. Not in the least. No, sir, not in the least.

Q. Then you also stated that one of the advantages to Atlantic dealers—you say “as well as to Atlantic”—for handling Firestone TBA, is because their prices are competitive. Isn't it true that Atlantic dealers can obtain the same or better prices in other brands of TBA than Firestone?

A. Not to my knowledge, no, sir.

2734 Q. Are you familiar with the price structure in the tire industry?

A. Do you mean, can I quote tire prices, Mr. Kelaher?

Q. Do you know whether or not some brands in the tire industry are generally sold at lower prices than other brands?

A. Yes, some brands would be sold at lower price. I would know that.

Q. So that there are brands which could be obtained by Atlantic dealers at lower prices than Firestone?

A. Of lesser quality.

Q. That is debatable.

You are in no position, I take it, to pass on the quality of Firestone, are you?

Mr. Thompson: If your Honor please, Mr. Kelaher just very carefully qualified Mr. Hathaway as an expert on quality a little while ago.

Mr. Kelaher: Not on quality.

By Mr. Kelaher:

Q. This morning you will recall in connection with a question with reference to Mr. Varnadore you made reference to the new lease, the new Atlantic lease?

A. Yes, sir.

Q. That lease was—I think the printed date is July, 1956, so that Atlantic dealers who have executed leases since that time or have asked for a change have 2735 entered into that particular lease; is that correct?

A. That is correct.

Q. Under that lease Atlantic obtains a return as rental on gross receipts, exclusive of certain taxes, and so forth, from its Atlantic dealers, isn't that correct?

A. Yes, on gross sales.

Q. And that includes gross sales of TBA?

A. Yes.

Q. Isn't that true?

A. That is true.

Q. So that from a financial standpoint it doesn't make any difference whether an Atlantic dealer sells Firestone or non-Firestone TBA; Atlantic still obtains a percentage of the gross sales of that TBA; isn't that correct?

A. A percentage of the gross sales that the dealer does.

Q. So it makes no difference from the brand standpoint, as I understand your answer, what TBA is sold by the Atlantic dealer insofar as rentals are concerned?

A. It would be based on the total gross sales of the station regardless of what he sells.

Q. And in that connection do you audit the books of the dealer or review the books of the dealer in computing rentals?

A. The salesmen do.

Q. You also made reference to the fact, this morning, that your salesmen, Atlantic salesmen, use an inventory stock list in connection with inventory checks at 2736 Atlantic dealer stations; do you recall that?

A. Yes, sir.

Q. Isn't that the Firestone basic inventory guide that you are referring to which is used?

A. It could be, or it could be one that they devised themselves.

Q. It could be one that Firestone devised themselves?

A. Or the salesmen's own, yes.

Q. Or the salesmen's own?

A. Yes.

Q. In connection with new types of TBA products which come on to the market, you referred to the fact that Atlantic personnel, salesmen particularly, must train Atlantic dealers on new TBA products; is that correct?

A. Yes, sir.

Q. And in that connection you referred to dry-charge batteries—the Firestone dry-charge batteries and tubeless tires?

A. Yes, sir.

Q. Isn't it true that competitors of Firestone also have such products, and such training would be necessary in any event, not just because Firestone happens to have them?

A. I picked those two examples because they are new to the industry and I believe Firestone was the first 2737 with the dry-charge battery. We took the opportunity to train our dealers in handling them. The tubeless tire is something that I would image all tire companies have tubeless tires today.

Q. So, in any event, you would have to train your dealers whether it was a Firestone brand or some other brand, as I understand your answer; isn't that correct?

A. We make it a point to train our dealers on all new innovations in our industry.

Q. During the course of your testimony you have made it quite clear, I think, that TBA is an essential part of the complete service station operation. Isn't that correct?

A. I feel that way; yes, sir.

Q. Isn't it true that an Atlantic service station dealer

must carry TBA to remain competitive with other service station dealers of other oil companies?

A. We believe that.

Q. And isn't it an essential part of Atlantic's program to keep its dealers competitive so that, of that fact itself, it must devote considerable time to TBA with respect to its service station dealers?

A. Yes.

Q. So it follows, then, that it is to the interests of Atlantic to train dealers, teach dealers, and so on, in connection with TBA to protect its own interests with 2738 respect to competitive oil stations; is that correct?

A. Yes, sir.

Q. And that is true regardless of the brand which is carried by any service station, isn't that true?

A. Yes, sir.

Q. So isn't it true, and based on your testimony now, that all the expenses incurred by Atlantic in connection with TBA, do not in and of themselves represent a saving to Firestone because they are expenses which would be normally incurred by Atlantic in the course of its normal business operations with service station dealers?

A. If I understand your question correctly, we would be doing a good bit of this training and teaching anyway.

Q. I have just one more group of questions.

I would like you to turn your attention to loans to dealers for a moment.

A. I beg your pardon?

Q. I would like to ask you some questions about loans to dealers.

In your experience as District Manager, have loans been made to new service station operators or to new operators of old service stations?

A. Yes, sir.

Q. And have those loans at times been in inventory instead of cash, or in lieu of cash?

2739 A. Not normally. It might be in gasoline, but that is a very—we don't like to do that.

Q. How is it in connection with TBA?

A. We would much rather do it on equipment.

Q. Do you recall any loans to dealers in stock rather than in cash?

A. We would make it in money unless we used gasoline. We don't like to use gasoline, so we keep away from that. Otherwise we would make loans based on a cash loan to a dealer with his equipment as collateral.

Mr. Kelaher: No further questions.

Mr. Thompson: No questions.

Hearing Examiner Kolb: That is all, Mr. Hathaway.

(Witness excused.)

Mr. Thompson: May we have a short recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

2740 Hearing Examiner Kolb: The hearing will come to order.

RICHARD D. THOMAS, was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Freed.

Q. Mr. Thomas, will you give the reporter your full name and address?

A. Richard D. Thomas, 2803 Arlene Circle, Baltimore 7.

Q. Mr. Thomas, what is your present employment?

A. I am presently a promotable dealer salesman in the Baltimore district for the Atlantic Refining Company.

Q. What did you do before entering Atlantic's employ?

A. I went through normal schools, went to college, and upon graduation went into the United States Air Force, where I served as a personnel officer for two years.

Q. And how did you happen to communicate with the Atlantic Refining Company concerning employment?

A. When I came out of the service my brother was employed by Atlantic in Erie, Pennsylvania, as a promotable dealer salesman, and he told me the advantages of working with Atlantic and how well he liked it, and suggested that I try it.

2741 Q. By whom and when were you employed by Atlantic Refining Company?

A. I was employed in October of 1954 by Mr. Hathaway.

Q. What was your first assignment as an employee of Atlantic?

A. The first thing they did was send me to the Atlantic dealer training school in Miami, Florida, on November 1, 1954.

Q. Was that a regular dealer training school, a five-weeks course?

A. It was a regular dealer training course of five weeks, of which there were approximately sixteen Atlantic dealers, prospective dealers, and four of us company employees.

Q. That is four, including yourself?

A. Including myself.

Q. What was your assignment in the Atlantic Company thereafter when you finished school?

A. When I came back from school I was assigned as a service salesman to work with various promotable dealer salesmen throughout the entire Baltimore district.

Q. And how long did you serve as a service salesman in the Baltimore district?

A. From December, late December 1954 to January 14, 1957.

Q. In January 1957 was your position changed?

A. At that time I was promoted to promotable dealer salesman.

2742 Q. And have you had that same position in the same district since?

A. I have.

Q. How many customers of Atlantic Refining Company do you serve as a promotable dealer salesman?

A. I have nineteen customers.

Q. And are those customers lessee dealers or contract dealers?

A. They are all lessee dealers.

Q. Would you just describe generally the territory which you handle?

A. Yes. My territory roughly would include West Baltimore, Southwest Baltimore, City and County, and Anne Arundel County.

Q. In the course of serving your customers, do you have occasion to know them rather intimately?

A. Yes. In calling on your dealers you get to know them very well, by their first names, you develop a friendship with the dealer.

Q. How often do you cover your customers?

A. Well, I try to call on all my dealers at least once a week. Some dealers maybe twice a week.

Q. And in serving your customers of the Atlantic Refining Company, what is your major purpose?

A. My major purpose is to sell Atlantic gasoline and motor oil, the most of it I can.

2743 Q. Under whose immediate supervision do you work?

A. My immediate supervisor is Mr. Munch.

Q. And his position is?

A. Sales supervisor.

Q. Are you also supervised by Mr. Hathaway, the district manager?

A. From time to time Mr. Hathaway also supervises me.

Q. In carrying out your activities as a promotable dealer salesman, are you free to establish the policy under which you will operate?

A. No. I have to go by the policy as given to me by the Atlantic Refining Company.

Q. And what is your understanding of the consequences if you are ever to breach that policy?

A. I think I would lose my job.

Mr. Kelaher: Is that a speculative answer?

By Mr. Freed:

Q. Is that your understanding, that you would lose your job?

A. I think I would lose my job if I violated policy.

Q. In connection with the leasing of service stations to your customers, what is your responsibility as a promotable dealer salesman?

A. Well, the first responsibility is to keep these stations operated at all times.

2744 Q. What is your understanding about the availability of operation of service stations by Atlantic Refining Company itself?

A. As far as I am concerned, it just doesn't exist. I never had that experience.

Mr. Kelaher: May I have that question and answer?

(The reporter read the record.)

Mr. Kelaher: I have to admit I am confused on the question. You are talking about the availability of dealers?

Mr. Freed: I will clarify that.

By Mr. Freed:

Q. Is the alternative of operating stations under your supervision as an Atlantic promotable dealer salesman by Atlantic Refining Company itself, available to you?

A. It is not.

Q. So far as you understand, all of the stations have to be operated by lessee dealers?

A. That is correct.

Q. And what would be the consequence to you, so far as you understand, if you were not able to provide lessee dealers to operate the stations under your jurisdiction?

Mr. Kelaher: Objection. I hesitate to object, but we are getting into some speculation here about the consequences of whether he does this or does that. I think we should stick to the facts.

2745 Mr. Freed: On the contrary, your Honor, I think that his understanding of his responsibilities is very important in this regard. Whether they are potential or are not is not important, so long as he understands that this is the situation and operates under that basis. I think it is germane to the issue.

Hearing Examiner: Kolb: The objection will be overruled.

The Witness: Again I would have to repeat, I think I would lose my job if I am not good enough to keep these stations operated.

By Mr. Freed:

Q. I want to go back to one point, and that is what do you do in connection with the leasing of service stations to dealers? What function do you perform in the decision to grant a lease?

A. I have no decision to grant a lease. What I do is primarily recommend to my sales supervisor, and Mr. Hathaway, respective lessees.

Q. Do your dealers know that that is your function, your sole function?

A. I think so, yes, sir.

Q. Whose decision is it to grant a lease on behalf of Atlantic Refining Company?

A. Mr. Hathaway, the district manager.

2746 Q. In the event that there would be a recommendation against renewing a lease, what would be your responsibility?

A. Well, in that case we would have discussed the lessee's shortcomings with the sales supervisor and he and I together would submit our recommendations to Mr. Hathaway in sufficient time to give the lessee plenty of notice.

Q. Would you have to make a detailed justification of any such recommendation?

A. In most cases it would have to be quite detailed. However, I have never had that experience.

Q. You have never made any such recommendation?

A. No.

Q. Have you, on the other hand, ever made recommendations that leases be renewed?

A. I have always made recommendations that leases be renewed.

Q. Have you had occasion to lose lessee operators of stations under your supervision?

A. Yes. This is one of the things that we are always faced with, losing dealers.

Q. What are the common reasons why you will lose a lessee dealer?

A. Well, they are varied, but perhaps the most common are family dislikes for service station operation, meaning extra hours that the husband isn't accustomed to;
2747 secondly, he just isn't able to make any money. In other words, he doesn't—he gets into financial diffi-

culties. In some instances the dealer or the lessee feels that he can better himself in another business, and he will go into a competitive business or an entirely different business.

Q. And in these cases does the initiative for leaving the station come from the lessee dealer himself?

Mr. Kelaher: Your Honor, I think it might be better if we didn't have leading questions on questions of this type.

Mr. Freed: I am sorry.

Hearing Examiner Kolb: I will let him answer that question. It is obvious, anyway.

By Mr. Freed:

Q. You may answer the question. Do you want it read back?

A. Would you read it back?

(The reporter read the question.)

A. Yes. In all cases, with my experience, all cancellations have come from the lessee.

Q. From your experience is it easy or difficult to locate satisfactory dealers to take the place of dealers who have left?

A. It is one of the most difficult jobs, part of my job, is locating dealers. Satisfactory dealers are very hard to find. We search many ways to find them.

2748 Q. What are some of the search methods?

A. We use newspaper ads, which usually bring you quite a few bodies, but not too many good, sound businessmen. You waste a bit of time there. So the next thing we use, we call on competitive service station dealers. We find that quite profitable because these people are people who are already in the business, they like the business, and they are much easier to talk into maybe coming over to your station. We also talk to route sales-

ment, dairy salesmen, postmen, farmers, and what have you.

Q. By any chance in your inquiries do you discuss this subject with your existing lessee dealers?

A. That is also another source, if you have lessees that are quite well known in their area, have been there for many years, they are many times able to offer you a lead as to a person who would like to go into the service station business.

Q. What is Atlantic's TBA policy?

A. As I understand Atlantic's TBA policy, we have sponsored TBA, but it is there for the dealer to accept it or reject it at his desire, his wishes.

Q. By "sponsored TBA" you mean the Firestone line of TBA?

A. I mean the Firestone line of TBA.

Q. Where did you learn of that policy?

A. I first heard of that policy when I attended 2749 the dealer training school in Miami, Florida. During that training course they brought out the fact that this was a good line of TBA, it had many advantages, but still it was up to the dealer to accept it or reject it. And I was subsequently informed of it at various sales meetings that we had while I was a service salesman, and again when I made promotable dealer salesman, Mr. Hathaway restated this policy to me.

Q. Do your dealers know about the "no forcing" policy?

A. Yes, they do.

Q. How do they know about it?

A. Well, I tell them of this policy when I first talk to them as a prospect in their homes. And they later learn about it, if they are successful in getting us interested in them, at an interview, and finally they learn about it again through a "no forcing" letter which they get from our regional manager after the signing of the lease.

Q. Do they also hear about it if they pass the first two steps and eventually get to Mr. Hathaway as a prospective lessee?

A. Well, yes. That was what I was referring to as the second step. In other words, when we take them in the office, if they are satisfactory to us, acceptable as a lessee, the sales supervisor and I take them in to Mr. Hathaway's office and he again goes over the TBA program with the dealer.

Q. And that TBA program includes a statement of the policy?

2750 A. "No forcing."

Q. Is that so?

A. That is true. That is correct.

Q. From your experience as a salesman, do you agree personally with the "no forcing" policy as a method of doing business?

A. I do.

Q. Why?

A. I think that is the only effective way to sell, is through salesmanship, getting the customer to like you so that he will buy from you. In the long run you will sell more TBA that way.

Q. In the granting of leases to new dealers is the handling of Firestone TBA ever made a condition or understanding of securing a lease?

A. It has never been, with my experience.

Q. Mr. Thomas, what kind of TBA do your dealers handle, anyhow?

A. They handle all kinds of TBA. I mean by that all brands. They buy anything they want.

Q. Do some of them buy very small quantities of Firestone TBA?

A. I have some that buy hardly any. I have others who buy a considerable amount.

Q. Can you give me some examples of those?

2751 A. Yes. Fred Koehler, a dealer of mine at North and Woodbrook, I can count on my fingers the dollars and cents figures that he has given as far as sponsored TBA.

Q. Has he been a lessee for very long?

A. Yes. Fred has been a lessee dealer for some seventeen years.

Q. More example, if you will.

A. With reference to Mr. Varnadore, who is in partnership with Joe Wyninger, they have been buying Exide batteries for years. Ever since I have known them, and I understand a considerable time before that.

The McNeill brothers at Glensfalls Parkway—

Q. Before you leave Varnadore—

Mr. Kelaher: I object to the latter part of his answer with respect to his understanding about the period before he arrived.

Hearing Examiner Kolb: Just limit the testimony to this man's time and that he has been with the company.

Mr. Freed: I beg your pardon.

Hearing Examiner Kolb: Let's limit his testimony to the time he has been with the company.

Mr. Kelaher: Is that part of the answer stricken, your Honor?

Hearing Examiner Kolb: I doubt if that will be necessary. Let it stand.

2752 By Mr. Freed:

Q. Can you give us further examples with that limitation of their dealer buying practices since you have been a promotable dealer salesman in Baltimore?

A. The McNeill brothers at Glensfalls Parkway, I installed them in the station last summer and they initially stocked Autolite batteries.

Q. Have they carried them since?

A. They are still carrying Autolite batteries.

Then Gill Heiderman, who is a dealer with some twelve years with the Atlantic Refining Company, who buys practically no sponsored TBA.

Q. Do you have some further examples?

A. George Anderson, at 5640 Ritchie Highway, buys Fram filters exclusively, and has since I have been there, and handles Gates radiator hose and fan belts exclusively.

Willis McKeel, at Ritchie Highway and Jumper Hole Road, handles Best batteries and stocks them, and has done that since I have had him as one of my customers.

Q. Does he handle any other brand of batteries in addition?

A. No, he doesn't.

Virgil Tackett, Mountain Road and Rockpoint Road, handles Delco batteries exclusively.

Cake and Dorr, a partnership, at Hanover and Potee Streets, handle Fram filters exclusively, Bowers batteries, at least fifty percent.

I think that pretty well summarizes the—

Q. Can you think of anyone else? Can I refresh your recollection if I mention Amos Wells?

A. Oh, yes. Amos Wells, Clifton and Denison Streets, who has been I consider one of my finest dealers, buys US Royal and Kelly tires and stocks them. And he also purchases AC filters and spark plugs from an outside jobber.

2754 Q. Would it refresh your recollection if I mentioned Dick Gallagher?

A. Yes. Dick Gallagher, who is a past contract dealer of ours, we recently built a new station and he is now a lessee dealer and handles Dunlop tires and tubes. He did so as a contract dealer and he does now as a lessee dealer.

Q. Does he carry Dunlop batteries also?

A. I thought I said batteries. Yes, he does.

Q. From your experience, Mr. Thomas, does the pur-

chase by a lessee dealer of TBA from sources other than Firestone play any part in Atlantic's decisions on granting promotions to better stations or improving existing stations?

A. No. My experience has been that the reverse is true, not that we penalize a dealer—

Q. Can you give us—

Mr. Kelaher: I don't believe he finished.

By Mr. Freed:

Q. Go ahead.

A. We actually have rewarded some of our dealers with newer type stations in spite of the fact that they buy outside or non-sponsored TBA.

Q. How about some examples?

A. An example is Amos Wells, who we are presently building a new three-bay service station for, to be ready in about two months. He will be the lessee.

2755 Q. Is that rebuilding of an existing station?

A. This is an entirely new location. He is moving from his present location to a new location. And Dick Gallagher, we completely remodeled his station at the present location.

The Gilbert Heiderman station is scheduled for remodeling within the next three months.

Q. Could you describe the extent of remodeling in that case?

A. A remodeling job, as I know it, is one where we completely tear down the old structure and build from the ground a modern service station.

Q. And that is what you are doing for Heiderman right now?

A. That's right.

Q. Is there any other example you can give us of similar action?

A. Well, I have an example, the McNeill brothers at Glensfalls Parkway. I am presently considering splitting the partnership up and giving Purcel McNeill, one of the acting partners, another one of my stations.

Q. And have you already discussed this with Mr. McNeill?

A. It has been discussed.

Q. Has this matter also been discussed with Mr. Hathaway?

A. It has.

Q. It has his approval?

A. He thinks it is a good move.

Q. In the course of calling on your customers, do 2756 you have occasion to see on display in the stations the TBA which is not bought from the Firestone store?

A. Yes. All the merchandise in the station is displayed openly, and I have an opportunity to see it at any time I like.

Q. Have you ever asked or told any of your customers not to display any of that TBA which was not bought from Firestone?

A. No.

Q. Were you present this morning, Mr. Thomas, when Mr. Hathaway was discussing and describing what Atlantic promotable dealer salesmen do to promote the sale of Firestone TBA?

A. Yes, I was.

Q. Do you, as a promotable dealer salesman, do the various things which Mr. Hathaway described as being done by people of your category?

A. Yes. He described it very well.

Mr. Freed: I have no further questions, Mr. Kelaher.

Mr. Kelaher: May we have a short recess, your Honor?
Hearing Examiner Kolb: All right.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

2757 *Cross-Examination by Mr. Kelaher.*

Q. Mr. Thomas, I would like to get a couple of dates clear. You became a promotable dealer salesman in the Baltimore area on January 14, 1957; is that correct?

A. That is correct.

Q. And at that time did you know that the Federal Trade Commission had issued a complaint against Atlantic Refining Company and Goodyear with respect to TBA commissions paid to Atlantic by Goodyear and Firestone?

A. No, sir; I didn't learn of that until just about three weeks ago, maybe—four weeks ago.

Q. The complaint was issued in January, 1956. And you haven't heard about it until when?

A. About three or four weeks ago.

Q. About three or four weeks ago?

A. Yes, sir.

Q. Never was it ever mentioned at discussions of Atlantic personnel, Atlantic salesmen?

A. Not to my knowledge.

Q. You stated that your major purpose was to sell Atlantic gas and motor oil, and direct; is that correct?

A. That is correct.

Q. Do you attempt to sell Firestone TBA at all?

A. I do.

2758 Q. Is it to your financial advantage to have an Atlantic dealer purchase Firestone TBA?

A. Not at the present time; no, sir.

Q. I am asking you to answer Yes or No.

A. No.

Q. Whether it is to your financial advantage?

A. No.

Q. It has already been stipulated in the record and Mr.

Hathaway testified that as a promotable dealer salesman you are on a quota system. Isn't that true?

A. There is no quota system whatsoever.

Q. Don't you receive extra compensation?

A. There is an extra compensation plan, which is available to the promotable dealer salesmen.

Q. Don't you operate under that plan?

A. It is available to me.

Q. What do you mean, "it is available"? You either operate on it or you don't.

A. I mean simply this: I have not received any compensation under it.

Q. But you have been operating under it at all times since you have been a promotable dealer salesman, haven't you?

A. It has been available to me.

Q. I would like to explore that a little.

Are you assigned a specific amount of Firestone 2759 TBA for a particular period?

A. No, sir; I am not.

Q. How is your extra compensation computed?

A. The extra compensation plan is computed based on the previous year's performance.

Q. Take it a little bit from there. In other words, this being 1958, if your 1958 sales of Firestone TBA exceeded your 1957 sales of Firestone TBA, you get extra compensation, don't you?

A. Providing you meet the minimum percentage increase.

Q. Providing you meet the quota, isn't it?

A. I don't have a quota, sir.

Q. You just said, now, that first you have a base figure. You say it is the previous year, so that would be 1957?

A. Yes, sir.

Q. Then you are assigned a quota which is a percentage increase over that base figure; isn't that correct?

A. I choose to call it "performance", performance factor.

Q. I don't think we have to engage in a battle of semantics. It seems to me that it is a very simple operation. You have a base figure which is your prior year's figure. That is number one, right?

A. Yes, sir.

Q. If you exceed a certain percentage, by a certain percentage, that amount, you get extra compensation, don't you?

2760 A. Yes, sir.

Q. So, getting back to my question, it is to your financial advantage to have an Atlantic dealer purchase Firestone TBA, is it not?

A. It hasn't been to date.

Q. That is not in response to the question. I think the response is obvious. It would have to be yes.

A. Put it this way: I have not ever received any extra compensation for the sale of Firestone TBA.

Q. Is that because you haven't tried to receive extra compensation?

A. It is not because I haven't tried.

Q. Then you have tried to receive extra compensation; is that correct?

A. I do try; yes, sir.

Q. And that is an incentive to you, to increase your sales of Firestone TBA, is it not?

A. I think it is an incentive; yes, sir.

Q. You think it is? It is, isn't it? Isn't the answer yes?
Hearing Examiner Kolb: He answered "Yes".

By Mr. Kelaher:

Q. You went down the list on ten Atlantic lessee dealers who are serviced by you and referred to the fact that they were buying non-sponsored Firestone TBA. Do you
2761 recall those names?

A. Yes, sir.

Q. The first one you mentioned, one of the first you mentioned was J. Varnadore. Do you recall that?

A. Yes.

Q. Isn't it true that Mr. Varnadore purchases Firestone tires?

A. It is.

Q. And stock them?

A. He does purchase Firestone tires.

Q. And isn't it true that Mr. Varnadore also purchases some Firestone accessories?

A. He purchases Firestone tubes, hardly any accessory items.

Q. But he does purchase some?

A. Very little.

Q. Is there an Exide battery sign on Mr. Varnadore's station?

A. There is an Exide battery rack in the inside of the sales room.

Q. I have asked you if there was an Exide sign on the station.

A. What do you mean "on the station"?

Q. On the outside of the station, is there an Exide sign?

A. No, sir.

Q. Is there a Firestone sign on the station? On the window?

2762 A. I think so, sir.

Q. Was your testimony to the effect that none of the dealers you mentioned purchased any Firestone TBA? Was that the substance of their testimony with respect to these ten dealers?

A. If I understand you right—

Q. You listed ten dealers. I want to know if none of the ten purchased Firestone TBA at all.

A. No, I don't think there is any that purchased none.

There are some so close to it that they could be called None.

Q. Let me ask you about George Anderson, for example. Does he purchase any Firestone TBA?

A. He purchases some Firestone tires and tubes.

Q. Tires and tubes are an important part of the TBA program, are they not?

A. Yes, they are.

Q. I will pick some at random here. Let me ask you about Cake and Door. Do they purchase any Firestone TBA?

A. They purchase very, very little Firestone TBA. Practically none.

Q. What batteries do they handle?

A. Bowers.

Q. Do they handle any other batteries?

A. They handle one or two Firestone batteries.

Q. On direct examination, you said they handle 2763 50 percent Bowers and 50 percent of some other battery, which was unnamed. The other was Firestone, wasn't it?

A. That is correct, sir.

Q. So where does that leave us? Do you mean they only have two Bowers batteries in the—

A. At the last sales call they had two Bowers and two Motor Kings, which is a Firestone battery.

Q. And two Firestone batteries?

A. Yes, sir.

2766 Hearing Examiner Kolb: The hearing will come to order. You may proceed.

Mr. Thompson: I call Mr. Russell Cooley to the stand.

RUSSELL E. COOLEY was called as a witness for the Respondent the Atlantic Refining Company and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

Q. Mr. Cooley, give your full name and residence address for the reporter?

A. Russell E. Cooley, 755 Chenango Street, Binghamton, New York.

Q. Mr. Cooley, are you presently the lessee of an Atlantic Station at Chenango and Nolan Streets in Binghamton, New York?

A. Yes.

Q. Is your station located in the City of Binghamton itself?

A. No, it is in the suburbs in Binghamton. It is called Hillcrest.

Q. The Binghamton area, I think, is sometimes referred to as the Tri-City or Triple City area?

2767 A. That is correct.

Q. What are those three cities?

A. Binghamton, Endicott and Johnson City.

Q. And they are all contiguous?

A. Yes.

Q. I believe, sir, that you first took this station with a partner in about 1947, is that correct?

A. January of 1947.

Q. Who at that time was your partner?

A. His name is Paul Purple.

Q. Then did he later withdraw from the station?

A. Yes, he did, because of health reasons.

Q. About when was that?

A. About 1950 or '51.

Q. Since that time, you have been the sole lessee of this station?

A. That is correct.

Q. You have, I believe, a three-year lease?

A. Yes.

Q. This is what, your second three-year lease?

A. Second one. I believe it terminates this coming January.

Q. Now, before you became an Atlantic lessee, what had been your experience?

A. I was with the Metropolitan Life Insurance Company as an agent for five years, counting three years 2768 in the Army. Before that time, I had worked and had leased a Socony Service Station.

Q. So that you had had three types of experience: One as a life insurance agent and second in the Army?

A. Yes.

Q. And third as a lessee of a Socony Station?

A. Right.

Q. As a matter of interest, sir, where did you serve in the Army?

A. I was in the European Theater in an armored division.

Q. Now going back, sir, to the operation of your station in Binghamton with Mr. Purple from 1947 until 1950 or '51, did you in those days handle TBA at that station?

A. Yes, we did.

Q. Do you recall whether at that time there was or was not a tire shortage where tires were still difficult to get?

A. I believe there was a tire shortage but the greater shortage was before we took the station over. In '47, I believe tires became more available.

Q. What kind of tires were you handling at that time at that station?

A. Lee, L-e-e tires.

Q. What kind of batteries?

A. Exide batteries.

Do you recall at about 1951, Atlantic Refining Company commenced to sponsor Goodyear TBA in your area?

A. Yes, I do.

Q. Do you recall whether you did or did not attend a dealer meeting at which the Goodyear plan was explained by Atlantic?

A. Yes, that was held at the Arlington Hotel.

Mr. Kelaher: Which hotel?

The Witness: Arlington.

By Mr. Thompson:

Q. Do you recall generally, sir, what was said about it by the Atlantic people—can you tell us?

A. I believe they explained they were going to handle Goodyear TBA products although it wasn't necessary for us to buy strictly Goodyear products. It would be to our benefit to handle Goodyear tires because of the advertising and quality of the product.

Q. Was it made clear to you, sir, that you could accept or reject the plan?

A. Yes, it was. I think it was so stated in a letter that we received from the home office about that time.

Q. Now, sir, I am now going to show you three letters, the first of which has been identified in this case as CX 150, which is dated March 1, 1951 and signed by Mr. Colley, Vice President of Atlantic Refining entitled "A Statement of Atlantic's TBA Policy" and ask you to look at that carefully and let me know whether you recall having received it at or about the time of its date?

A. Yes, I remember it.

Q. The second document I want to show you has been identified as CX-206, and is also a letter from Mr. Colley dated August 28, 1952 called "A Restatement of Atlantic's TBA Policy" and I ask you to look at that letter carefully

and let me know whether at or about the time of its date, you recall receiving it?

A. Yes, sir, I remember that one also.

Q. I had showed you these letters immediately before you testified, had I not?

A. Yes.

Q. Then do you recall receiving still another letter in 1955 in the form which I now show you signed by some one other than J. D. Estlow, this document having been identified for this record as CX-207?

A. Yes, I remember this too.

Q. With respect to CX-207, the one that I have shown you is signed by Mr. J. O. Estlow, Manager of the Philadelphia and New Jersey Marketing Region, do you recall who the manager of the New York region for Atlantic was in 1955?

A. I don't believe I do. I think it was Ostrander, O-s-t-r-a-n-d-e-r.

Q. The letter you received would not have been signed by Mr. Estlow but by Mr. Ostrander or whoever was 2771 the Region Manager in New York at that time?

A. Yes. I'm not positive who it was at that time.

Q. Thank you, sir. Now, since Atlantic commenced promoting and sponsoring Goodyear TBA brand in 1951, what tires have you actually handled or carried at your station, sir?

A. I have carried several brands. My main stock, of course, is Goodyear, but if a customer wants a Lee tire or Firestone tire or a Goodyear tire, I don't hesitate to buy it.

Q. Have you from time to time bought Lee tires from Mr. Boungiornk?

A. Yes, I have. He was my supplier.

Q. Is that spelled B-o-u-n-g-i-o-r-n-k?

A. Yes. He is an Atlantic dealer about half a mile from my station and he handles Lee tires.

Mr. Thompson: Now, would you mind repeating for me, please, his answer to the question about Lee tires.

(The reporter read the answer as requested.)

By Mr. Thompson:

Q. For a time after Atlantic commenced to promote and sponsor the Goodyear tires, where you handling Lee at your station?

A. Yes. Pardon me, at the time, we changed to Goodyear?

Q. Yes.

A. We were handling Lee tires.

Q. After the change, too?

2772 A. Yes, I continued to handle them for some time.

Q. About how long, sir, do you recall?

A. Probably a year.

Q. Why did you shift to Goodyear tires?

A. Well, I found that the name "Goodyear" is more acceptable to the public, quality of the brand, the advertising and the fact that they have a large stock available.

Mr. Kelaher: Could I have that answer again, please?

(The reporter read the answer as requested.)

By Mr. Thompson:

Q. Now, since 1951, Mr. Cooley, what brand of batteries or brands have you been carrying at your station?

A. Exide batteries and on occasion I have secured Willard or Delco batteries for a customer.

Q. Have you been handling Goodyear batteries at all since 1951?

A. I have sold a few Goodyear batteries also.

Q. Now, about your accessories, what sources of supply have you used since 1951?

A. I buy from several wholesalers, namely, Whipple's

Automotive; Rose Unit Parts; United Auto Parts, Binghamton Auto Supply and several others besides those I mentioned.

Q. Do you buy accessories in any substantial quality from Goodyear?

A. No, not many accessories.

2773 Q. Are these non-Goodyear TBA items to which you have referred openly displayed at your station?

A. Yes, they are.

Q. Do you have an Exide sign at your station?

A. Yes, I believe there is.

Q. Do you carry Gates belts and hose?

A. Yes, I do.

Q. Are there signs or advertising pieces relating to those two Gates' items at your station?

A. Yes, there are.

Q. Do you have a Johnson's wax sign at your station?

A. I believe there is one.

Q. Do you have decals on your windows?

A. There were decals on the windows and they remodeled the station about two years ago as far as the windows were concerned and I believe there are no decals on the windows now, the new windows.

Q. Do you have Exide battery testers and chargers at the station?

A. Yes.

Q. Do they bear the Exide name?

A. Yes, they do.

Q. Do you have one of these Bowes thermometers on your station, do you recall?

A. I had a Bowes thermometer on the station. I
2774 believe it has been removed but I do have a Bowes sign saying "Tubeless repairs."

Q. Now, are all these non-Goodyear TBA items displayed so that they are visible to the Atlantic salesman and representatives who come to your station?

A. Yes, they are.

Q. Have they always been so displayed?

A. Yes, they have.

Q. Do you sell TBA on Atlantic credit cards?

A. Yes.

Q. Do you sell non-Goodyear TBA on Atlantic credit cards?

A. Yes.

Q. Have you ever been criticized for so doing by Atlantic?

A. Not at all.

Q. Do numerous TBA jobbers solicit your business?

A. Yes, they do.

Q. Do jobbers of tires other than Goodyear solicit your business?

A. Yes, they have.

Q. Can you mention some of the brands which you have been solicited to buy in recent years?

A. Goodrich Tire Company; Firestone Tire Company and recently an Atlas representative. I believe Atlas is an Esso product.

Q. Do you from time to time buy from any of these tire jobbers?

2775 A. Yes, I have.

Q. Mr. Cooley, have you ever been criticized by Atlantic for carrying non-Goodyear TBA?

A. No, I haven't ever.

Q. Have you ever been told to stop buying it?

A. No.

Q. Have you ever been told to get it out of your station?

A. No.

Q. Ever been told to hide it?

A. The way my station is constructed, it would be physically impossible to hide anything.

Q. Has Atlantic ever sought to force or pressure you to buy Goodyear TBA?

A. Not in the least.

Q. Have you at all times felt free to buy any brand of TBA that you wanted?

A. Yes.

Q. Have you in fact always done so?

A. Yes, I have.

Q. In the 21 years in which you have been an Atlantic lessee, has your lease been renewed many times?

A. Yes, I believe you made an error in the number of years there.

Mr. Kelaher: Yes, I think so.

Mr. Thompson: Excuse me, 11.

2776 The Witness: You said 21, it has been 11.

By Mr. Thompson:

Q. I mean 11?

A. Yes, that has been true.

Q. Upon the occasion of the renewal of your lease, has Atlantic ever brought forth the fact that you handle primarily non-Goodyear TBA?

A. No.

Q. Have you ever at any time felt that your lease was in jeopardy because of your handling of non-sponsored TBA?

A. Never.

Q. Are there a lot of oil companies actively in the Tri-City Binghamton area?

A. Yes, several.

Q. A number of service stations of competing companies?

A. Yes.

Q. In the years in which you have been at your station, have you built up a personal clientele who visit you and who rely upon you as a gasoline and TBA supplier?

A. Yes. My station is 90 percent neighborhood trade. I'm not on a through highway.

Q. Do you know many of your customers by name?

A. At least 95 percent of them I know by their first name.

Q. They know you by name?

A. Yes, sir.

2777 Q. Incidentally, sir, do you give personal credit to some of your customers?

A. Yes.

Q. So that they have charge accounts with you?

A. Yes.

Q. Have you from time to time been solicited by competitors of the Atlantic Refining Company to take a lease from one of them?

A. Yes.

Q. With all due modesty, would you care to mention a couple of names?

A. Yes, brand names—you mean of other companies?

Q. Yes. I mean what other companies have solicited you to take stations?

A. Well, as I said before, my station is on a neighborhood street and the reason it is—there is a short four-lane bypass which is about three-quarters of a mile long and on this three-quarters of a mile of a four-lane highway, I think there are six different companies represented by new stations. And at some time or other, I think I have been solicited at least twice by all of these companies. There is a Gulf station, a Socony station, a Sonoco station, two Esso stations, and American station and a Rotary station.

Q. Rotary is the name of an individual which does business in the Binghamton area?

2778 A. Yes, I think the company is known as the Southern Oil Company.

Q. Mr. Cooley, with all those opportunities, why have you stayed with Atlantic?

A. Because I am happy in my present situation.

Q. Is your station from time to time inspected by Atlantic representatives?

A. Yes, it is.

Q. Are the results of such inspection discussed with you by Atlantic?

A. Sometimes.

Q. On the occasions when they do discuss the inspection, is the point raised that you are dealing in non-Good-year TBA?

A. No, it never is. I think the primary reason for those inspections is either appearance or service.

Q. Does the sales supervisor or the district manager sit down with you once a year or occasionally and have a review of your business?

A. Yes, they do.

Q. In the course of such discussions, do they make suggestions to you about how you might improve your earning capacity at the station?

A. Yes, I believe that is the object of those meetings, to produce a balanced selling job.

Q. Do you find such discussions helpful to you?

2779 A. Yes, they are.

Q. At such discussions, do they ever criticize you for not carrying Goodyear TBA?

A. No.

Q. Were you one of the Binghamton dealers who was honored by a visit from a Mr. Lipsky back in 1953?

A. Yes, I was.

Q. Did Mr. Lipsky identify himself as an investigator of the Federal Trade Commission?

A. Yes, he did.

Q. Did he seek to talk to you about your operations at the station?

A. Yes.

Q. Did you have such a discussion?

A. Yes, we did.

Q. Was it a fairly long discussion?

A. Yes, I believe it lasted about two hours.

Q. What was his objective and purpose in talking to you, if you can tell us briefly?

A. I believe the object of the discussion was that he was trying to discover if Atlantic were using any force on the Atlantic dealers to handle Goodyear TBA.

Q. At the time of his visit to you, did you have non-Goodyear TBA openly displayed at your station?

A. Yes, I did.

2780 Q. As he talked to you, did he write things down on a piece of paper?

A. Yes.

Q. Were the words he wrote down your words or his?

A. They were his words. I signed my name to the final sheet.

Q. Did he discuss the provisions of your lease with you?

A. Yes, he did and he asked to see a copy of my lease.

Q. Did he mention to you a provision in the lease which is sometimes called a 30-day cancellation clause—do you recall it at all?

A. Yes, I do.

Q. What was his objective and what did he say about it?

A. Why I gathered that he was trying to find out if Atlantic would ever use the 30-day clause as a whip in case they wanted us to handle an exclusive product. I believe I answered I didn't know and I didn't believe so.

Q. With respect to your own personal dealings and relationships with Atlantic, did you in your own words

give him substantially the same information which you have given us here today?

A. Yes.

Q. That was back in 1953?

A. Yes.

Q. And since that time, you have in fact been carrying any brand of TBA you wanted to carry?

2781 A. Yes.

Q. Now, Mr. Cooley, the distinguished looking gentleman on my left here is counsel for the Goodyear Company and he may want to ask you some questions. The gentleman on my right, the particularly handsome gentleman, is Mr. Kelaher who represents the Federal Trade Commission and I'm sure he is going to have some questions for you.

Mr. Ingraham: I have no questions.

Hearing Examiner Kolb: You may cross-examine.

Cross-Examination by Mr. Kelaher.

Q. Mr. Cooley, I would like to review some of the answers you gave in response to questions by Mr. Thompson to see if we have them clear in our minds. Since Atlantic began the Goodyear TBA program, which was in or about March 1951, you stated on direct examination that you carried Goodyear tires as your main stock, is that correct?

A. Yes, that is correct.

Q. You also stated that you carried other brands of tires, is that true?

A. Yes, I do. I don't carry them in stock necessarily but I do obtain them if the customer wants other brands.

Q. If the customer requests you obtain that particular tire?

A. Yes.

2782 Q. The only tire you stock is Goodyear?

A. That is right. I believe I still have a few Lee tires on my shelves left over from Lee stock.

Q. Now, with respect to batteries, you say that since Atlantic changed over to the Goodyear TBA program, you have carried Exide batteries as your principal stock?

A. That is correct.

Q. And also on occasion, you had purchased some batteries bearing the Willard or Delco brands, is that correct?

A. Yes, customer request.

Q. You also stated that since Atlantic changed over to Goodyear TBA program you have only carried a few Goodyear batteries, is that correct?

A. That is right.

Q. Now, with respect to the accessories, you stated that you make purchases from several wholesalers?

A. Yes.

Q. Is that true?

A. Yes.

Q. You also stated that you do not make many purchases of accessories from Goodyear?

A. That is right.

Q. Now, with respect to your service station identification, prior to the time that Atlantic began to carry the Goodyear TBA line, you stated you stocked Lee tires 2783 and Exide batteries, is that correct?

A. Yes.

Q. Did you also—were they purchased from Atlantic?

A. Yes, I mentioned Frank Boungiornk as my lead supplier. The reason I mentioned that is because he is very close to me where I have to go across town to get to the Atlantic warehouse. At the same time I did get some Lee tires from the Atlantic warehouse as well as Exide batteries.

Q. That is when Atlantic was selling Lee tires and Exide?

A. They were in the TBA business.

Q. At that time did you also purchase some accessories from Atlantic?

A. Yes, I did.

Q. Now, at that time, did you have any window decals on your station or outdoor signs?

A. Yes.

Q. Before the changeover to Goodyear?

A. Yes, I did.

Q. What brands did you have out there?

A. I believe there was Exide batteries decal on the window and I believe a Lee tire decal.

Q. What happened after Atlantic changed over to Goodyear TBA with respect to those signs?

A. Well, they were removed by, I believe, a Goodyear salesman and a Goodyear decal was put up.

2784 Q. Did you request them to remove the Lee and Exide signs and put up the Goodyear signs?

A. No, I don't believe I requested it.

Q. Beg pardon?

A. No, I don't believe I did request it.

Q. You made no request. Did they just come around and take down the Lee-Exide and put up the Goodyear?

A. Yes. They do that quite frequently with promotions. Our Atlantic salesmen and Goodyear salesmen come around and put up different tire sales signs. In fact, they even come and take them down.

Q. You are talking now about Goodyear signs?

A. Yes.

Q. Now, I would like to go over with you the circumstances which led up to your discontinuing Lee tires and beginning to handle Goodyear tires and other Goodyear products. Do you recall specifically how you first learned about the fact that Atlantic was going to sponsor Goodyear TBA?

A. I believe we first received a letter from Atlantic

explaining that they were going out of the TBA business and we would be able to get supplies and tires from Goodyear Tire and Rubber Company. I think that was followed by a meeting at the Arlington Hotel.

Q. What happened at the Arlington Hotel?

A. Well, there was a discussion and display of 2785 Goodyear products and it was explained to us how it would be to our benefit to handle Goodyear tires and TBA.

Q. Now, who were present at the Arlington Hotel meeting to which you refer?

A. We were Atlantic employees as well as Goodyear.

Q. Was the Atlantic district manager there?

A. Yes.

Q. Was the Goodyear district manager?

A. Yes.

Q. Were all the Atlantic dealers in the Binghamton area present to your knowledge?

A. I believe they were.

Q. Was it made clear to you at that time that Atlantic would like to have you carry Goodyear TBA?

A. Yes, it was.

Q. Was it made clear to you that Atlantic expected you to carry TBA?

A. No, I don't believe there was anything said that they expected us to but I think they explained that it would be to our benefit to handle Goodyear products.

Q. Did Atlantic make it clear to you that you were supposed to handle Goodyear TBA?

A. No.

Q. Now, I would like to discuss the signed statement you referred to in your direct examination. You 2786 stated that Mr. Lipsky spent about two hours with you?

A. Yes.

Q. So you recall that discussion very well?

A. Yes.

Q. And you also recall that you read the statement, do you not?

A. Yes, I did read it before I signed it.

Q. To your knowledge and belief, the statements appearing thereon were truthful, were they not?

A. Yes.

Mr. Kelaher: Mr. Examiner, I would like to have the reporter mark for identification the document which I hand her as CX-483, which I believe is the next number.

Hearing Examiner Kolb: Exhibit 438 is the next one.

(The document referred to was marked Commission's Exhibit 483 for identification.)

By Mr. Kelaher:

Q. Mr. Cooley, I am going to show you Commission's Exhibit 483 for identification and ask you to state what that is?

A. (After inspection.) I believe this is a statement that I gave Mr. Lipsky in 1951.

Q. 1953?

A. 1953, I'm sorry.

Mr. Kelaher: Your Honor, I now offer in evidence Commission's Exhibit 483, which is a statement of 2787 Russell E. Cooley dated December 8, 1953, bearing his signature and also the signature of Henry I. Lipsky, Attorney Examiner, Federal Trade Commission.

Mr. Thompson: May I have the purpose of the offer?

Mr. Kelaher: The purpose of the offer is to abide by the Hearing Examiner's ruling in our Baltimore hearings. As I recall it, if I were to interrogate the witness on the signed statement for any purpose, it should be offered in evidence. That is the reason I am doing it at this time.

Mr. Thompson. On that basis and for the reasons stated

by Mr. Kelaher, I have no objection. May I ask the witness whether he can read this writing because I can't.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 483.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 483, was received in evidence.)

Mr. Thompson: This is in the nature of a voir dire question.

Hearing Examiner Kolb: You said no objection.

Mr. Thompson: I just wanted to ask one voir dire question. This stuff is not in your writing, is it?

The Witness: No, it isn't.

Mr. Thompson: Can you read it? Can you read the fellow's writing?

2788 The Witness: There are parts of it that I can't quite make out.

By Mr. Kelaher:

Q. At the time Mr. Lipsky prepared this statement, he conferred with you for about two hours and he went over everything in the statement with you, did he not?

A. Yes, he did.

Q. At the time you knew everything that was in the statement and you could read the statement and it was discussed with you at length, isn't that true?

A. That is right.

Q. If there were any additions or corrections, you were asked to make them at that time, isn't that correct?

A. Yes.

Q. Now, Mr. Cooley, on direct examination today, you stated that you do not stock any batteries but Exide, is that correct?

A. That is correct. I believe there is one Goodyear battery in the station at the present time.

Q. Now, you also stated on cross-examination that has been the situation since Atlantic changed over to Good-year TBA in 1951?

A. Yes, and that was the situation before. Exide has been the only battery I have stocked.

Q. Now, in your signed statement, under two 2789 brands of TBA carried, you have batteries, "Good-year and Exide (only stocks cheap battery, formerly Resolute, now All Weather.)" Now, both the Resolute brand name and the All Weather brand name are brands of the Goodyear Tire and Rubber Company, isn't that correct?

A. Right.

Q. So your statement on direct that you never stocked Goodyear batteries is wrong, isn't it?

A. There was a time when they first came out with dry charge batteries and Goodyear Tire and Rubber were the first ones to come out with a dry charge battery where the acid is shipped separately and because of storage problems, I bought a few Goodyear batteries at that time. Exide at that time had not come out with dry storage batteries.

Mr. Thompson: May I also suggest, Mr. Kelaher, when you examine a witness with respect to a statement 2790 in Mr. Lipsky's handwriting, which he was induced to sign, that you show it to him.

Mr. Kelaher: I object. I don't understand your frivolous statement. I not only showed it to him, he has read it and there is nothing in this record to indicate he was induced to sign it. He has read the statement carefully. I gave him all the time he wanted to read.

Mr. Thompson: When you ask questions about this statement, I would appreciate it if you would show the witness the document to which you are referring and the

part to which you have reference and are quoting. If you don't want to adopt the suggestion, I will just object when you follow some other practice.

Mr. Kelaher: You just keep objecting. I am not going to adopt it.

Mr. Thompson: I will start objecting when you get out of bounds like I always do.

Mr. Kelaher: I am just attempting to get the facts here and there is no attempt to embarrass the witness. If there is a conflict in his testimony, I think we are entitled to show it.

By Mr. Kelaher:

Q. Now, you also stated on direct examination that you purchased from a number of suppliers and that you purchased very few accessories from Goodyear, is that correct?

2791 A. Yes, I do purchase a few however from Goodyear too.

Q. You do purchase a few. And what products have you purchased from Goodyear Service Store since March 1951?

A. Well, I have purchased Purolator oil filters.

Q. Do you stock Purolator oil filters?

A. Yes, I did. However, I don't purchase my oil filters from them at the present time. I believe they handle AC filters now. I do have Purolator filters in stock.

Q. But you have purchased from Goodyear on a stocking basis in the past?

A. Yes.

Q. Now, what other accessories have you purchased from Goodyear Service?

A. I believe Simonize products and DuPont products, polishes, DuPont chemicals.

Q. Have any of those been purchased on a stocking basis?

A. Yes, they have. Sometimes they come up with a spring deal.

Q. So your statement that you only make a few purchases of accessories from Goodyear Service Stores, I believe, is slightly understated, is that correct?

A. No, I would say just a few.

Q. Even though you purchase items on a stocking basis?

A. Have occasionally. Most of my TBA is purchased from salesmen who come to the station and I don't 2792 particularly buy from any certain one. It is whatever I happen to need when a certain salesman comes along.

Q. Now, at the time of December 1953, when Mr. Lipsky called at your station, the only other TBA supply of accessories that you mentioned was Whipple's Auto Supply, is that correct?

A. That is possible.

Q. At that time you didn't mention this whole list of TBA jobbers you referred to in your direct testimony, is that correct?

A. It is possible I was buying only from Whipple's because Whipple is the nearest supply house to my station.

Q. So at that time, you were purchasing accessories from Goodyear Service Store and from Whipple's Auto Supply and from no one else?

A. I don't believe that is true. I think I had on occasion purchased from these other houses I mentioned.

Q. On occasion, but your purchases were very few from the other houses?

A. Very few.

Q. Now, I would like to discuss with you the events leading up to your changeover to Goodyear TBA. In your signed statement, reference is made to the fact, and I will show you this part of your statement, under 5, and ask you

if that refers to the meeting at the Arlington Hotel to which you referred in your testimony. I quote:

2793 "In 1950, ARC District Manager introduced District Manager for Goodyear, explained that ARC going out of TBA business."

Was that the Arlington Hotel meeting?

A. Yes.

Q. Then the next sentence: "Mr. Russell, ARC salesman together with Goodyear representative would like to see Goodyear TBA." Was that statement made at the meeting or was that made later individually with you, do you recall?

A. I would imagine that statement was made later as Mr. Russell was my salesman.

Q. He was your salesman?

A. Yes.

Q. He, together with a Goodyear representative, called on you, is that correct?

A. I believe it is.

Q. They discussed the situation with you?

A. Yes.

Q. And at that time Mr. Russell said that they would like to see you go Goodyear, is that right?

A. Correct.

Q. Did the Goodyear representative also say that, do you recall?

A. Yes, I would imagine he said he would like to see us handle Goodyear.

2794 By Mr. Kelaher:

Q. Let me put it this way. On direct examination, you gave a number of reasons why you changed from Lee-Exide, and so on to Goodyear TBA. Do you recall your answers on direct?

A. Yes.

Q. You referred to such things as quality, advertising, public acceptance and the fact that they had a large stock available and so on. Wasn't the real reason the fact that you knew that in order to remain in the good graces of Atlantic, it was to your advantage to carry Goodyear TBA?

A. No, I don't believe that was true at all. I think what I said, we were supposed to handle Goodyear. I think what I meant there by the word "supposed" is the fact that all Atlantic stations were soon to be associated with 2795 Goodyear Tire and Rubber and in order to benefit by the advertising and the name "Goodyear," the public acceptance of the name "Goodyear," it would be to my benefit to handle Goodyear batteries.

Q. Now, as I understand your answer now, you knew that all of the Atlantic stations in the Binghamton area were going to switch over to Goodyear TBA?

A. I didn't know they were going to but I knew that they were going to be offered Goodyear products and tires and that the majority of them were going to handle Goodyear Tire and Rubber.

Q. That is exactly what happened?

A. Yes, that is what happened.

Q. Now, you also state in your signed statement that you make reference to a survey. Do you recall that at the time? The statement on this signed statement says:

"Survey conducted ARC that Goodyears was more favorable." Do you recall any statements by Atlantic to you that Goodyear was more favorable to Atlantic dealers than other brands? Do you recall that statement?

A. I don't recall the exact statement. I think it was brought out in meetings.

Q. What did they say about the survey, do you recall that?

A. I believe they said they had a survey in the State of Pennsylvania—

2796 Q. (Interposing.) Which was Atlantic?

A. Yes, and that I think Firestone Rubber and Goodyear were considered in our area and they found that Goodyear had better acceptance than Firestone.

Q. Did they ever ask you which one you preferred?

A. Yes, I believe they have asked me my thoughts along the line, and I have told them Goodyear..

Q. Was this prior to 1951?

A. I can't say for sure.

Mr. Kelaher: May I have a short recess, your Honor?

Hearing Examiner Kolb: We will take a short recess.

(A short recess was taken.)

2797 Hearing Examiner Kolb: The hearing will come to order.

By Mr. Kelaher:

Q. Mr. Cooley, prior to Atlantic's switch over to TBA, you carried Lee tires on a stocking basis, did you not?

A. Yes.

Q. And that means you carried them from about 1947 to sometime in '51, over four years, approximately?

A. That is right.

Q. Lee tires have a good consumer acceptance in your area, do they not?

A. Yes, very good.

Q. And did Lee tires have a road hazard guarantee, which is particularly acceptable, isn't that true?

A. It is very attractive. That was one of the things I felt bad about when we left Lee tires was the fact we were giving up the road hazard guarantee. Goodyear guaranteed against workmanship and material. Since that time, I have found in the past five years I have had three tire adjustments on Goodyear tires.

Q. Three what?

A. Tire adjustments. At the time we were handling Lee tires I found we had a tire adjustment everyday.

Q. You had no trouble getting adjustments on Lee?

A. No, the tire I replaced the chances were in a 2798 short time I would be adjusting that.

Q. But the fact is that Lee does have good consumer acceptance and Lee is also advertised in your market area, too, isn't it?

A. So.

Mr. Thompson: I object to the double questions, Mr. Kelaher. I don't know which one he is answering. You asked about advertising and you also asked about public acceptance in the same question. It is impossible to tell which question he is answering when you ask a double question.

Mr. Kelaher: I will rephrase it. I think the witness understood it, but I will rephrase it.

By Mr. Kelaher:

Q. Lee tires are advertised in your market area, too, are they not?

A. They are, but I will say since Atlantic has changed to Goodyear—

Q. (Interposing.) I am just asking you. Well, you go ahead, finish your sentence.

A. I wanted to say since Atlantic has changed to Goodyear, Lee tire has become almost extinct in my area.

Q. Thank you.

And, of course, prior to when Atlantic was carrying Lee tires, Lee tires were a big seller in your area?

A. They were as far as Atlantic was concerned.

2799 Q. Now, was it also true that you could get a lower price on Goodyear tires?

A. There may be some instances where the price is a little lower on Goodyear, but I think they are comparable.

Q. Now, you also stated one reason you preferred Goodyear versus Lee was due to quality. You don't profess to be an expert on the quality of the tires, do you?

A. No, I don't, but I believe that the Goodyear tire is a much better tire.

Q. In your own opinion.

A. In my own opinion after 10 years of experience in the tire business.

Q. But, Lee also puts out a tire which is comparable to Goodyear as to line, do they not?

A. Yes, they do.

Q. Now, weren't you able to purchase Lee tires from Mr. Buongiorne after Atlantic discontinued the Lee program?

A. Yes, I was, and did on occasion.

Q. So that you did have a stock available if you wanted them?

A. Yes, sir.

Q. So you did state on direct examination that one reason you preferred Goodyear was because they had a large stock available. But you also had a stock available of Lee, is that true?

A. Yes, but the Goodyear service stock was much 2800 larger and more varied than Frank Buongiorne's was.

Q. Of course, there was also a Lee factory branch in Syracuse, I believe, where you could have obtained them; is that true?

Mr. Thompson: Just a minute. Mr. Kelaher is—

Mr. Kelaher (interposing): I also believe there was a Lee factory branch in Syracuse, New York, where he could have obtained Lee tires.

The Witness: Yes, there was. I don't know whether it is still there or not.

By Mr. Kelaher:

Q. There was at the time, but there is a change over?

A. Yes.

Q. Now, have you had any difficulty since you changed to Goodyear tires competing with the Goodyear service store?

A. No, I have not.

Q. Well, I would like to refer you to this statement in your signed statement.

Mr. Thompson: Would you be kind enough to show it to him, Mr. Kelaher?

(The document was shown to the witness.)

Mr. Thompson: Thank you.

By Mr. Kelaher:

Q. I would like to read the statement that he can't match the competition of Goodyear service store. Recently Lee wanted to sell Links Aviation Company some 2801 truck tires, but Goodyear store quoted Links a better price than the dealer could offer. His list was \$59.00; Store sold for \$60.00, almost as cheap as he could buy tires from the Store. Do you recall that?

A. Yes. I think that is true on a fleet such as Links would have. The Goodyear store does give them a fleet price.

Q. So you do have difficulty competing with the Goodyear service stores in some instances or it is in many instances?

A. No, I would say that is an isolated case. Evidently, I did have trouble with that case.

Q. Do you think that was somewhat unfair that your purchase price was about the same as Goodyear's selling price?

A. Well, I think probably they are selling Links tires at a free price, the same price as they would sell them to me as far as that is concerned.

Q. The point is the Goodyear service store is in competition with you for business, is it not?

A. Yes, that is true.

Mr. Kelaher: No further questions.

Redirect Examination by Mr. Thompson.

Q. Did you object to the installation of a Goodyear decal on your station?

A. No.

Q. Did you consent to it?

A. Yes.

2802 Q. You were not requested or subpoenaed to appear in this proceeding as a witness for the Federal Trade Commission, were you, sir?

A. No.

Q. I can readily understand why, sir.

Mr. Thompson: That is all.

Recross Examination by Mr. Kelaher.

Q. With respect to the service station identification, I believe you did testify, and your statement so shows that they did not ask your permission, neither Atlantic nor Goodyear asked your permission to put up the Goodyear window decals, did they?

A. I don't know as they asked my permission. They told me that they were going to put them up. I think if I had objected that they wouldn't have put them up.

Q. However, according to your statement, they did not ask your permission and at least they went up; is that correct?

A. Yes, they went up. But I was present at the time, and if there had been any objection, I certainly would have told them.

Mr. Kelaher: No further questions.

Mr. Thompson: Thank you, very much, Mr. Cooley.
(The witness withdrew from the stand.)

Mr. Thompson: I will find Mr. Buongiorne. He is
2803 our next witness.

Hearing Examiner Kolb: We will take a few minutes recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: If your Honor please, may I call Mr. Frank R. Buongiorne to the stand.

FRANK R. BUONGIORNE was called as a witness and, after being properly and duly sworn, was examined and testified as follows:

Direct Examination by Mr. Thompson.

Q. Would you give your full name to the court reporter, please?

A. Frank R. Buongiorne.

Q. What is your residence address?

A. Three Watson Avenue, Binghamton, New York.

Q. Mr. Buongiorne, as you know, I was here representing the Atlantic Refining Company with Mr. Gordon, whom you have also met. On his left is Mr. Ingraham, who represents the Goodyear Company, and the distinguished gentleman on my right is Mr. Kelaher, who represents the Federal Trade Commission.

Now, you, sir, are an Atlantic lessee of the station 2804 in the Binghamton area?

A. Yes, sir. 638 Chenango Street.

Q. I believe, sir, that you have had that same station since about 1945?

A. Yes, sir. March, I believe, '45.

Q. And at first you were a lessee with a partner, Mr. Gay?

A. No, sir, I wasn't. At first I leased the station in my own name, because at that time Atlantic did not lease to a partnership. A little later on it was changed to a partnership lease, and we were partners for quite some time after that.

Q. What was the name of the partnership?

A. Buongiorno and Gay.

Q. G-A-Y?

A. Yes, sir.

Q. I think, sir, there are two Gay's in your area, are there not?

A. Yes, it gets confusing.

Q. Which Mr. Gay was your partner?

A. Frank Gay. Frank E.

Q. And that partnership continued until about 1957?

A. October 1st, sir; yes.

Q. And since that time he has withdrawn from the partnership and taken another Atlantic station?

A. No, sir.

Q. He is not in the business anymore?

2805 A. He is working for another Atlantic dealer. I bought him out in October.

Q. You bought him out?

A. Yes, sir.

Q. Since October of '57 you have again been the sole lessee of the station?

A. That is right, sir.

Q. Now, before you took the station in 1945 what had been your prior experience? Had you been a service station operator before?

A. Before I took this Atlantic station?

Q. Yes.

A. Yes, sir. I had at one time leased in a partnership

agreement with Mr. Gay I spoke of before. I had previously leased at one time two Esso stations. Previous to that I had leased an Esso myself, and previous to that I had an Amoco station.

Q. Did you serve during the war in the armed forces?

A. Yes, sir. Eighth Air Force.

Q. And except for that interval during the war, have you been in the service station business since about 1934?

A. I would say with the exception of about six months when I had to go into another business to get even.

Q. That was when? Before the war?

A. Previous to the war I was sort of young, at 2806 least that is the excuse I make for myself, and I did go broke and in order to get clear and be able to go back into business, I took other employment and straightened with Esso, and the facts bear themselves out because after that I re-leased from them.

Q. After that you went with Atlantic?

A. Well—

Q. (Interposing.) After the war?

A. Yes, sir. Right after the war, with Atlantic.

Q. And you say you have never gone broke working for Atlantic, have you?

A. No, sir.

Q. Now, in the operation of your present Atlantic station before 1951, did you carry TBA?

A. Certainly.

Q. What brands of tires did you carry before 1951?

A. Before '51 I believe I carried Lee tires exclusively.

Q. Did you carry Exide batteries at that time?

A. Yes.

Q. Do you recall the time about 1951 when Atlantic ceased to market Lee tires and Exide batteries and commenced to promote and sponsor the Goodyear TBA line?

A. Yes.

Q. Do you recall attending any dealer meetings about 1951 where the Atlantic change-over was explained?

2807 A. Yes, sir, very well.

Q. Do you recall generally what happened at that meeting and can you describe to us what was said to the dealers about the change-over?

A. Yes, I think I can. It was held in the Arlington Hotel in the Binghamton. It was a dinner meeting, as I remember it, and the entire program was presented, and we were briefed on the reason that Atlantic was going out of the TBA business—the thing that comes to my mind was transportation, etc., distribution—

Q. (Interposing.) I couldn't hear you.

A. I say we were briefed on the reasons Atlantic had gone out of the TBA business, and it comes to my mind that it was a transportation problem, distribution, and so on, and that the Goodyear program was made available to us, and I believe at that time one of the reasons that it was made available, stock, supplies, at that time, was a little tough to procure stock.

Q. Tires, particularly?

A. Yes, tires particularly, and in view of the fact that most of us, I say most of us, I should say myself, I was buying a good deal of my inventory from Atlantic—

Mr. Kelaheer (Interposing): Your Honor, excuse me. I would just like to have an answer to the question, and he just asked him what transpired at the meeting, as
2808 I understand it.

Mr. Thompson: He is explaining the background.

By Mr. Thompson:

Q. Have you finished your explanation?

Mr. Kelaheer: He is getting into what he did at his service station. I think we should stick to the meeting first and then go into this later.

By Mr. Thompson:

Q. Have you finished what went on at the dealer meeting, Mr. Buongiorne?

A. No, what I wanted to tell you, point out why it was made available to us, because I couldn't at that time go out on the market and buy exactly what I wanted. Without a supplier I think I would have been in tough shape at that particular time. That is all.

Q. Yes, sir.

Mr. Kelahe: I don't think that is responsive to the question.

Mr. Thompson: Totally responsive to the question that I asked him.

Mr. Kelahe: I thought you asked him what transpired at the meeting.

Hearing Examiner Kolb: Objection overruled. Let's go ahead.

2809 By Mr. Thompson:

Q. Mr. Buongiorne, was it made clear to you at that meeting that you could take the Goodyear program or leave it, that it was a voluntary program so far as all of you dealers were concerned?

A. Yes, the program was available to us.

Q. Now, following the Atlantic change-over to the promotion of Goodyear TBA, did you continue to handle Lee tires?

A. Yes, sir.

Q. Have you been a Lee tire distributor for a number of years, Mr. Buongiorne?

A. Since the date of the Atlantic change-over, I have been a distributor in that area, yes, sir.

Q. Did you procure a distributorship from Lee at the time of the change-over?

A. I did.

Q. And you are still a Lee tire distributor?

A. Yes, sir, both wholesale and retail.

Q. Before I ask any further questions about that, I should like to ask you whether you recall having received from the Atlantic Refining Company a document which has been identified on this record as CX-150, dated March 1, 1951, from Mr. Colley, the vice-president of the Company (handing document to the witness). Take a good look at that and let me know whether you recall receiving it, will you?

2810 A. Yes, sir. I believe it is in my files at home.

Q. And did you also receive a document identified as CX-206, which is a letter from Mr. Colley, dated August 28, 1952 (handing document to the witness)?

A. Yes, sir; I remember this one specifically.

Q. And do you recall also receiving another document identified as CX-207, dated June 24, 1955, from the Atlantic Refining Company, in the form which I now show you that is signed by someone other than Mr. Estlow (handing document to the witness)?

A. I had this one, but it seems to me that it came from Mr. Ostrander.

Q. And he was the Atlantic region manager in New York?

A. Syracuse, sir.

Q. With headquarters at Syracuse?

A. Yes, sir.

Mr. Thompson: I ask that this document be marked for identification as Atlantic's Exhibit 12.

(Whereupon, the document referred to was marked Respondent's Exhibit (Atlantic) 12 for identification.)

Mr. Thompson: And also a second document to be identified as RX-A-13.

(Whereupon, the document referred to was marked Respondent's Exhibit (Atlantic) 13 for identification.)

2811 By Mr. Thompson:

Q. Mr. Buongiorne, have you from time to time sold TBA on credit at your station to your customers?

A. Yes, sir.

Q. And by on credit I mean your personal credit.

A. Yes, sir.

Q. I show you a document which has been identified as RX-A-12, headed "Buongiorne and Gay" and ask you whether during your partnership with Mr. Gay this was the form of bill used by you in rendering statements to your TBA customers (handing document to the witness)?

A. Yes, sir.

Q. Was that form of document in use by you for some years before 1957?

A. As long as Mr. Day and I were in business we had that form.

Q. And did your form of bill head always include the advertising for Lee tires and Exide batteries, which is shown on this paper?

A. Yes, sir.

Mr. Thompson: I offer in evidence RX-A-12.

Mr. Kelaher: No objection.

Hearing Examiner Kolb: Let it be received in evidence as Respondent's Exhibit A-12.

2812 (Whereupon, the document, heretofore marked
RESPONDENT'S EXHIBIT (ATLANTIC) 12 for
identification, was received in evidence.)

By Mr. Thompson:

Q. After Mr. Gay withdrew from the firm and you continued yourself under the name of Frank R. Buongiorne, did you use RX-A-13 as the form of your own personal bill to your TBA customers (handing document to the witness)?

A. Yes, sir.

Q. And since October of '57 has your bill head always contained the advertisement for Lee tires and Exide batteries which appears on A-13?

A. That is right, sir.

Mr. Thompson: I offer in evidence RX-A-13.

Hearing Examiner Kolb: Any objection, Mr. Kelaher?

Mr. Kelaher: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Respondent's Exhibit A-13.

(Whereupon, the document, heretofore marked RESPONDENT'S EXHIBIT (ATLANTIC) 13 for identification, was received in evidence.)

By Mr. Thompson:

Q. Do you from time to time advertise Lee tires in other manners by so-called give-a-way pieces?

A. Yes, sir; we have a cooperative deal with Lee 2813 on advertising.

Q. Including a—

A. (Interposing.) That is a rain hat, I believe, sir.

Q. Including a rain hat, which is contained in a little colored envelope marked with your name?

A. Yes, sir.

Q. And also the Lee tire name?

A. That is right.

Q. Are you listed in the Binghamton classified telephone book as a Lee distributor?

A. Yes, sir.

Q. And have you been so listed, either you, yourself, or your partnership, Buongiorno and Gay, for many years?

A. I couldn't give you the dates, sir, but as long as I can remember, I would dare say ten years without exaggeration.

Q. Are you still handling Lee tires?

A. Absolutely.

Q. Have you continuously handled Lee tires since you opened this station as lessee back in '45?

A. Right from the beginning.

Q. Do you also handle some Goodyear tires?

A. Certainly.

Q. And any other brand that your customers want?

A. Yes, I have Goodrich, Royal.

Q. You stated that prior to 1951 you were handling 2814 Exide tires at your station.

A. Exide batteries, sir.

Q. Exide batteries at your station.

A. Previous to '51.

Q. Yes?

A. Yes.

Q. Did you continue to handle Exide batteries after 1951?

A. I handled them right up to date, yes, sir.

Q. Do you also handle some Goodyear batteries?

A. Probably handle more Goodyear than Exide right at the present time, yes, sir.

Q. Which has better acceptance in your area so far as batteries are concerned, Goodyear or Exide?

A. Are you talking in relation to price, sir?

Q. No, I am talking about customer acceptance, which do you have more demand for at your station?

A. Goodyear.

Q. Going back to tires for a moment, do you still have demand in your area for Lee tires, customer demand?

A. Yes.

Mr. Kelaher: Could I have that question. The truck made a noise.

(The reporter read the question and answer.)

By Mr. Thompson:

Q. What source do you use for accessories at your 2815 station, Mr. Buongiorno?

A. All local wholesalers in the Binghamton area. Do you want the names of them, sir?

Q. Would you mention a few, please, sir?

A. I buy from Whipple's Auto Supply, Rose Unit Parts, United Auto Parts, Auto Supply Distributing, all car dealers' parts requirements in some cases, that would be Buick, Chevrolet, and so on. Actually, it is a case of the salesman that is there when you need something. I don't have any, you know, set, deal with anyone, actually.

Q. Do you also from time to time buy accessories from Goodyear?

A. Oh, certainly. His chances are as good as the next fellow's if he is there at the right time.

Q. Is the non-sponsored TBA, that is to say, the non-Goodyear TBA, which you carry at your station, openly displayed?

A. I don't understand you.

Q. Do you keep it right out in the open, all these Lee tires and Exide batteries and non-Goodyear accessories so anybody can see them?

A. I couldn't sell them if they couldn't see them. Yes, sir.

Q. Have you got any Lee and Exide signs on your station?

A. I have, I believe, two Lee signs, one Exide. I am not much on signs at my station to be truthful with you. I try to keep it uncluttered because it is one of those things 2816 that will grow. But I do have, I believe, those three exterior signs.

Q. Do you have a Goodyear decal on the window?

A. Around the top, yes, sir.

Q. Do you sell non-Goodyear TBA to holders of Atlantic credit cards?

A. Do I sell other than Goodyear TBA to holders of Atlantic credit cards?

Q. Yes.

A. Yes.

Q. Have you always done that?

A. I never gave it a thought to be truthful with you, but I assume we have, yes.

Q. Well, nobody from Atlantic has ever criticized you for selling any kind of TBA on an Atlantic credit card, have they?

A. No.

Q. In addition to Goodyear, are you solicited by other tire manufacturers?

A. Yes, quite regularly.

Q. Can you name a few of them?

A. Oh, Cooper tires, Dunlop, some of the ones I mentioned previously that I do buy solicit regular with the idea of stocking their brand, you know, more or less be a stocking dealer because, naturally, the chances of the product moving would be greater, but I don't actually
2817 stock anything but Lee and Goodyear.

Q. And buy anything else that any customer wants, I suppose?

A. Yes. If a person specifically wants a brand, why, we will buy them for them.

Q. Has Atlantic ever criticized you for being a Lee distributor?

A. To the best of my knowledge, no, sir.

Q. Have they ever told you to stop dealing in Lee tires or Exide batteries or any of these other non-sponsored TBA items?

A. No.

Q. Have they ever told you to hide them or get them out of your station?

A. As far as I know, no, sir.

Q. I mean, have they?

A. Why, no.

Q. Have they ever tried to put pressure on you or to force you to buy Goodyear TBA?

A. No way whatsoever, sir.

Q. Have you always felt free to handle any brands of TBA you liked?

A. I do. I still do. Yes, sir.

Q. And do you, in fact, handle any brand of TBA you like?

A. Whatever I can make a dollar on that is what I handle.

Q. And your lease has been renewed many times 2818 since you started as an Atlantic lessee?

A. Yes, sir.

Q. Upon the occasion of lease renewals has anybody ever tried to hold against you the fact that you deal in these non-sponsored TBA items?

A. No.

Q. The subject never mentioned?

A. No, sir.

Q. Your station is in a pretty competitive area, is it not, Mr. Buongiorno?

A. I can't answer with a Yes or No, sir.

Q. Well, really all I am interested in is this: have you from time to time had opportunities to take stations from competitors in the Atlantic Refining Company?

A. Yes, sir.

Q. A number of such chances over the years?

A. Quite a few of late, especially, yes.

Q. Why do you stick with Atlantic in view of the offers of competitors?

A. Why do I stick with them?

Q. Yes.

A. Well, I have always had what I considered a very nice relation with them. I have always made a very good living, and as far as I am concerned, I intend to stay with

them until I cease doing anything, which I hope isn't
2819 too far in the future.

Q. I suppose the Atlantic representatives inspect your station from time to time?

A. Inspect the station?

Q. Yes.

A. Yes, sir.

Q. Then, do they later discuss with you the results of the inspection?

A. Yes, sir.

Q. On such occasions the fact that you carry large quantities of non-Goodyear TBA, has that ever been brought up in a critical sense?

A. Not with the inspection. It is cleanliness, orderliness, and so on.

Q. It has nothing to do with TBA brands?

A. No, sir.

Q. Once a year or so, does the Atlantic sales supervisor discuss with you ways of increasing your business and your profits in a kind of an annual review?

A. Yes, sir, in the annual review. That is right.

Q. Is there any emphasis in those reviews about the brand or kind of TBA that you are carrying at your station?

A. No, sir.

Q. They, of course, are interested in your selling TBA, are they not?

2820 A. In a balance selling sense.

Q. Yes, sir. Now, are you one of the gentlemen in your area who was honored by a visit from Mr. Lipsky?

A. Yes, sir.

Q. Was that back in 1952 or 1953?

A. I couldn't tell you sir, but I do remember that he was there.

Q. A number of years ago?

A. Yes, sir.

Q. Do you recall him as a person? Would you know him if you saw him?

A. I wouldn't, no.

Q. Did he ask you a lot of questions about TBA, do you remember?

A. Actually I am not clear on what the man asked me. I remember he was there, and I remember talking to him, and it runs in my mind that I did at the time show him the entire setup there, the stock, displays and so on, and so forth, but actually it is vague, really it is.

Q. Do you remember whether he wrote things down on a piece of paper while he was talking to you?

A. I believe he took notes all the time I was talking to him and it runs in my mind, and this I can't say for sure, I signed the thing when he finished.

Q. That you signed some kind of a paper which 2821 he had written up?

A. Yes, sir. I think I did.

Mr. Thompson: Thank you, very much, sir. That is all the questions I have at this time.

Mr. Ingraham, representing Goodyear may want to ask you some questions, or Mr. Kelaher may.

Have you any questions, Mr. Ingraham?

Mr. Ingraham: I have no questions.

Hearing Examiner Kolb: You may cross-examine.

Mr. Kelaher: May I have a minute, your Honor?

Hearing Examiner Kolb: We will take a short recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Kelaher.

Q. Mr. Buongiorno, I want to go over your direct examination to see that we have some of these matters clear.

I don't think it has been established yet when your partnership began with Mr. Frank E. Gay. Do you recall the approximate time when you became a partner with Mr. Gay?

A. Could I ask Mr. Detweiler a question?

Q. You go right ahead. Who is Mr. Detweiler?

The Witness: Do you know when Atlantic's policy 2822 went into effect?

Mr. Detweiler: Frank, I think it was—I know it was after I came down there. I came down in '52, and I am guessing now, I think it was around '54, early '54, regarding partnerships you are referring to?

The Witness: It was a matter of form, sir, and I had no reason for—

By Mr. Kelaher:

Q. (Interposing.) I am just trying to get some facts clear. You said that at first you leased the station in your own name, but at that time was Mr. Gay your silent partner? I am trying to get the facts.

A. No, sir. I see where that is confusing. At the time I leased the service station originally from Atlantic Refining Company, Atlantic would not lease to a partnership. They would lease only to one person; so, I held the lease. My partner and I had a legal partnership, registered in Broome County as partners, but the lease was in my name.

Q. And that continued until Atlantic permitted partnership leases?

A. At that time when our new lease came up, which was periodically, we had it in both names.

Q. You say that is about 1954?

A. I would say that is what Mr. Detweiler says. I can't say for sure.

2823 Q. Now, going along on your direct examination, I would like to check some of these items with you. You said that before 1951, that is before Atlantic began to sponsor Goodyear TBA, you carried Lee tires exclusively, correct?

A. Yes, sir.

Q. And did you also carry Exide batteries exclusively?

A. Not exclusively on the Exide batteries, sir. I did carry them, and it was my major battery, yes, sir.

Q. And did you purchase accessories through the Atlantic program at that time?

A. Yes, sir.

Q. Now, do you recall on your direct examination that you were asked about the Atlantic dealer meeting at the Arlington Hotel?

A. Yes, sir.

Q. In Binghamton, I presume?

A. Yes, sir.

Q. And at that time in connection with that testimony you stated that it was made clear to you that you could take the Goodyear TBA program or leave it, in effect; is that right?

A. Yes, sir.

Q. You could take it or leave it?

A. Yes, sir.

Q. You were under no pressure whatsoever?

A. No, sir.

2824 Q. And I think along those lines you have testified that you have been as free as the air, so to speak, to handle whatever TBA you wish?

A. Yes, sir.

Q. You have been under no pressure whatsoever from

Atlantic during any of this time that we are discussing, isn't that true?

A. That is true, sir.

Q. And specifically when Atlantic changed over to Goodyear TBA plan, you have been under no pressure whatsoever from Atlantic to handle Goodyear TBA?

A. No pressure, sir.

Q. No pressure, and they have committed no acts or made no statements or done anything which would lead you to believe that they wanted you to handle Goodyear TBA; is that correct?

A. Other than in a selling job that a salesman—any salesman would do, yes, sir.

Q. Yes, sir. Now, you also have sold any brand of TBA you desire on Atlantic credit cards; is that true?

A. Yes, sir.

Q. And you have never had any problem in connection with that?

A. Not a bit, sir.

Q. Now, you also testified that Atlantic never criticized you for being a Lee distributor, correct?

2825 A. That is right.

Q. And they never told you to hide Lee tires, and this applies also to the fact that you carry Exide batteries?

A. Yes, sir.

Q. They never asked you to hide Lee or Exide or get them out of the station; is that correct?

A. That is correct, sir.

Q. You also stated on direct examination that you have two Lee signs and one Exide sign on your station; is that correct?

A. I believe it is, sir. Yes, sir.

Q. And have those signs been there since Atlantic began to sponsor Goodyear TBA, were they placed there since Atlantic began to sponsor Goodyear TBA?

A. They have been there as long as I have been in that building which is a comparatively new building, I would say five years. They were also on the old building as far as that goes, but—

Q. Was there ever a time when Goodyear TBA signs were put up in your station?

A. Yes, I have one Goodyear sign and Goodyear decals around the top of the windows in the showroom, office.

Q. And did you at one time have Lee window decals or Exide window decals?

A. Never had, sir, that I can remember.

2826 Q. Did you ever have Lee or Exide sign, outdoor sign?

A. I have a Lee—an Exide outside sign now, and have always had—and I did have an Exide electric sign in my side window at one time. It was a clock affair, you know, that said Exide on it.

Q. Now, when Atlantic put up the Goodyear or when the Goodyear—what were the circumstances leading to the placing of the Goodyear TBA signs in your station? Did you have any objection to Atlantic putting those signs up?

A. Atlantic didn't. Goodyear did. And I had no objection other than the first time they put them up. I wasn't quite ready for them yet, the building was new, we hadn't cleaned it and so on and so forth; so, they came back at another time and put them on.

Q. Now, Mr. Buongiorno, I would like to ask you a few questions about the time that a gentleman from the FTC called on you.

A. Yes, sir.

Q. We have Mr. Henry I. Lipsky in the room with us, and I would like to have him stand and ask you if that refreshes your recollection as to the gentleman who called on you.

(At this point Mr. Lipsky stood.)

A. I have been looking around the room trying to remember the man. I just didn't remember him. Maybe it is the glasses. I do now. Yes, sir.

2827 Q. You do now?

A. Yes, sir.

Q. That is fine. You also remember that he talked at length with you at the time of his visit, isn't that true?

A. It seems to me he was there quite a while, yes, sir.

Q. Quite a long time, and at the time he made notes which he showed to you, isn't that correct?

A. I believe so, yes, sir.

Q. You believe it is. And isn't it also true that he asked you to read the statement which he showed to you and thereafter asked you to sign it?

A. I would imagine so. I wouldn't have signed it if I hadn't—

Q. (Interposing.) You would not have signed it if you had not read it?

A. Right.

Mr. Kelaher: At this time, your Honor, I ask that the document I hand the reporter be marked as CX-484.

(Whereupon, the document referred to was marked Commission's Exhibit 484 for identification.)

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Kelaher:

Q. Mr. Buongiorno, I am going to show you Commission's Exhibit 484 for identification and ask you to state whether or not that is the statement which was signed by you on December 8, 1953, at the time of Mr. Lipsky's interview.

A. May I read it sir?

Q. Sure, go right ahead.

(The document was handed to the witness.)

Mr. Thompson: Take your time, Mr. Buongiorne.

By Mr. Kelaher:

Q. Is that the statement that you signed?

A. I believe it is to the best of my knowledge, yes, sir.

Mr. Kelaher: Mr. Examiner, at this time I offer Commission's Exhibit 484 into evidence.

Mr. Thompson: This is going into the evidence on the same basis, for the purpose of assisting you in cross-examination and not as substantive evidence?

Mr. Kelaher: It is going into evidence for all purposes, including the truth of the statements made therein, period.

Mr. Thompson: I, of course, object to it on that basis, your Honor.

Mr. Ingraham: We also object, your Honor.

Hearing Examiner Kolb: The objection will be overruled, and the document will be received in evidence as Commission's Exhibit 484.

2829 (Whereupon, the document, heretofore marked COMMISSION'S EXHIBIT 484 for identification, was received in evidence.)

Mr. Kelaher: If I understand counsel, and so there will be no misunderstanding, my purpose in admitting CX-483, which was the statement of Mr. Cooley, was also for all purposes, including the truth of the statements made therein. I didn't know there was any question about that.

Mr. Thompson: That wasn't the purpose for which you offered it at the time.

Mr. Kelaher: That was my clear intention.

Mr. Thompson: You mean you are now trying to enlarge your offer?

Mr. Kelaher: I certainly am not. I was under the impression that was the offer I made. I don't think it is any time to quibble about technicalities on a matter of this

type. I offered statement after statement in Baltimore, and they were all offered for the same purpose. I don't feel that I should be restricted to the objection made by counsel.

Mr. Thompson: Are you through?

Mr. Kelaher: I sure am.

Mr. Thompson: May I have the floor?

Mr. Kelaher: You may have it as long as you want.

Mr. Thompson: Thank you, very much.

Why, of course, I object to a statement pulled out 2830 of the files of the FTC if it is offered for the purpose of proof of the substantive statements made by the witness. Obviously a document signed by Mr. Buongiorno, if there be any slight inconsistencies between his present statement and something said to Mr. Lipsky in 1953 can be used for purpose of cross-examination, but not as substantive evidence in the case.

It would seem to me, sir, that that was pretty elementary.

Mr. Kelaher: I think counsel is in error on that. You can introduce direct testimony to show self-contradictory statements of a witness once you have laid the foundation for it, which we have done here.

Mr. Thompson: You can do it for purposes of impeachment, but not as substantive evidence.

Hearing Examiner Kolb: I think the document is competent to show whether or not he made certain statements five years ago which did or did not conflict with what he has testified today, and once it goes in for that purpose, I think it is in for all purposes. I see no occasion for any further hassle on it.

Mr. Thompson: My objection is on the record, and your Honor has ruled on it.

Hearing Examiner Kolb: Do I understand that that objection also applies to the previous exhibit?

2831 Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: I am overruling that objection also.

Mr. Kelaher: Thank you.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Kelaher: I would like to have it understood on the record that this witness is not to talk to counsel or to Atlantic representatives or to anyone else concerning the testimony he has given here today or the statement which was given to him.

Mr. Thompson: You mean you are asking—

Mr. Kelaher: (Continuing.) Otherwise, we will be compelled to go forward.

Mr. Thompson: I think you had better go forward, Mr. Kelaher, as I do not like the inference at all. You go right ahead and I will sit here.

Mr. Kelaher: It certainly wasn't intended to be occasion—

Mr. Thompson: (Interposing.) Go ahead. You just go ahead and cross-examine your witness.

By Mr. Kelaher:

Q. Mr. Buongiorno, I would like to establish one thing at the outset. You actually maintain two businesses, do you not?

2832 A. No, sir.

Q. Aren't you a Lee distributor as well as an operator of an Atlantic service station?

A. No, I wouldn't say two businesses, sir, no, one business, one income tax.

Q. Don't you have, or at the time of the interview, your station was located at 683 Chenango Street; is that correct?

A. That is right.

Q. And your warehouse for Lee tires was at 640 Chenango Street, right?

A. That is right.

Q. And wasn't that a garage behind your service station?

A. That is right, sir.

Q. And, as a matter of fact, you have sold Lee tires from a separate warehouse, have you not, and stocked them in a separate warehouse?

A. I have stocked them there, but I don't have room in my regular service station, yes, sir.

Q. I am going to take you over your direct testimony and compare with what you stated to Mr. Lipsky in 1953.

At that time you stated—let me put it this way. You stated here today on direct examination that you have continued to stock Lee tires. Were you implying that you continued to stock Lee tires in your service station since Atlantic changed over to Goodyear TBA?

2833 A. That is right, sir.

Q. Now, your signed statement says that—

Mr. Thompson (interposing): Show it to him, please, Mr. Kelaher.

Mr. Kelaher: Beg pardon?

Mr. Thompson: Will you show it to him?

Mr. Kelaher: He has read it.

Hearing Examiner Kolb: He can read it to him and then show it to him. Go ahead.

By Mr. Kelaher:

Q. Your signed statement says Goodyear stored in service station located at above address, and it also says that Lee is stored at the garage behind the service station.

A. That is right.

Q. So, when you say that Lee was stocked in your service station since 1951, you were incorrect, were you not?

A. May I explain it, sir?

Q. You go right ahead.

A. Wholesale operation is much greater than service

station operation. For wholesale purposes we stock two or three hundred tires. There is certainly no room for them in the service station.

Q. So, at one time, did you stock Lee tires in your service station since 1951?

A. I do right now, yes, sir.

Q. And at one time were you asked to get those 2834 Lee tires out of your service station by—

A. (Interposing.) Never.

Q. Let me read it to you.

A. I read it, sir, but that is not exactly what it was.

Q. You read that statement before you signed it, you understand?

A. Yes, but that was more of a—a salesman trying to sell merchandise, the same as a Purolator man would ask me to take Fram out; just in a selling manner.

Q. I would like to read this to you in connection with your stocking of Lee tires. You have stated here today that you were under no pressure to handle Goodyear TBA at the time of the change over?

A. That is right.

Mr. Thompson: If you won't show the witness what you are using, may I watch it?

Mr. Kelaher: You certainly may.

By Mr. Kelaher:

Q. "Dealer stated that the Goodyear"—

Mr. Thompson (interposing): Why don't you begin at the beginning of the sentence. I thought you would do that.

Mr. Kelaher: I will begin not only at the beginning, I will go up a paragraph.

By Mr. Kelaher:

Q. "The things that hurts is this—the dealer states 2835 that he is being told how to run the business, hours

open and TBA handled. It is not like running own business, as it is supposed to be, when you are told what to do."

Mr. Thompson: Now that you have read that, have you got a question?

Mr. Kelahef: I am reading this whole thing and then I will propound the question.

By Mr. Kelahef:

Q. This is all in connection with the fact that you say you can handle any TBA you want.

"No pressure as such—

"Dealer stated that the Goodyear set-up at first made him mad. Thinks he should get five percent Arco is getting. He believes it is five percent. Salesmen don't sell."

There, were you referring to Arco salesmen, I presume?

A. I would imagine, yes, sir.

Q. You would imagine, sir.

Then: "Change came about two years ago. Arco discontinued Lee and Exide; dealer kept stalling change and went into Lee heavy and distributed Lee to service station dealers who were without source of supply. Finally, Goodyear truck came by—sales promotion truck—took down Lee signs and replaced with Goodyear."

Do you recall that now? Do you not?

2836 A. I recall decal deal, yes, sir.

Q. And—

A. (Interposing.) But I don't recall them taking down Lee signs, because I don't believe in my new building we have ever had any Lee signs, that is, on the windows.

Q. What is your present station location address?

A. 683 Chenango.

Q. And this interview took place at 683 Chenango; is that correct?

A. Yes, sir.

Q. And prior to that what was your station location?

A. That I would have to explain if I could have a minute.

Q. Just give us the address, the prior address.

A. It is an impossibility, sir.

Q. Can't you give us the address of your prior—

A. (Interposing.) 683 Chenango Street.

Q. Has it always been 683 Chenango Street?

A. That is what I would like to explain.

Q. Go ahead.

A. At 683 I had a service station, an old building, it was actually a house converted to a service station. Atlantic built me a new one on the same property and, after the new one was built we worked out of the old one until it was completed, and then we moved into the new one and demolished the old one. That is why we run into this 2837 discrepancy on the addresses.

Q. So you actually had an old station and a new station at the same address?

A. Yes, for a matter of the change-over period, yes, sir.

Q. All right. But the Goodyear, you stated that the Goodyear truck came by, took down your Lee signs and replaced them with Goodyear. That is correct, isn't it?

A. I can't tell you, honestly.

Q. Are you saying now that the statement you gave to Mr. Lipsky is not correct?

A. I am not saying it is not correct, but the thing is vague in my mind because of the change-over at that time. Whether the Lee signs were in the old building along the windows the same as the Goodyear signs are on the windows now, I don't know for sure. I don't intend to—by the way—I don't intend to say that Mr. Lipsky has it wrong. It is just not clear in my mind.

Q. But the Lee signs did come down, that you remember, and the Goodyear signs went up?

A. That is right, yes, sir.

Q. That is correct. And you have testified here today that you had Lee signs and have always had Lee signs on your property?

A. That is right.

Q. But there was a time when some Lee signs 2838 were taken down, isn't that correct?

A. Sir, we are talking about two different kinds of signs.

Q. Apparently, we are. What kind of sign are you talking about?

A. Around the top of the window in the Atlantic station today is a Goodyear decal that goes around the top, says, "Tires, Batteries, Accessories—" and so on. The signs I am referring to, or signs I have always had at the station, exterior signs, pole signs, a metal sign that will go on a roof. Do you understand?

Q. I understand what a pole sign is. Are you saying there is a Lee pole sign on your premises now?

A. There is a Lee roof sign on my premises now.

Q. Is there a Goodyear sign?

A. There is a Goodyear pole sign.

Q. And that is the sign that was put up when the Goodyear truck came around?

A. No, not the pole sign. The decals in the windows.

Q. All right. Then, we go on here. You stated that you "can't install own advertising on property." You recall that statement, I take it?

A. That is true.

Q. That made you very mad, didn't it?

A. At the time, yes.

Q. In other words, you had to advertise what 2839 Atlantic wanted you to advertise; isn't that correct?

A. No, sir; the policy was, no advertising on the building. We have a metal building, and I did try—in fact, I did put up either a Bowes or a Prestone sign on my

building in metal and I found to my sorrow it made a mess of the place I put it.

Q. You stated, "Can't install own advertising on the building."

A. Not on a metal building.

Q. That was with reference to the Lee signs?

Mr. Thompson: Was that a statement or a question?

Mr. Kelaher: I am asking him a question.

Mr. Thompson: Let him answer it.

The Witness: The Lee signs have been at my place of business as long as I have been there and are still there and they have never come down. The decals are in the window are now Goodyear, where previous to Atlantic having a TBA program with Goodyear they were Lee.

By Mr. Kelaher:

Q. They were the ones that were taken down?

A. That is right, along the top of the window.

Q. Then you went on to state: "How long do you think we would be in business if we had signs up (Lee) out front or stored Lee tires in the service station."

Do you recall making that statement, I assume, to Mr. Lipsky?

2840 A. I must have if I signed that thing, yes.

Q. So, actually, to be truthful about it, you were not free to handle Lee tires or other TBA in your station, you had to handle Goodyear TBA?

A. No, sir.

Q. Well, that is in direct conflict with your statement.

Mr. Thompson: Stop arguing with the witness and ask him questions.

Mr. Kelaher: I have a right to answer questions and let me proceed.

The Witness: I think you misinterpret the thing, sir.

By Mr. Kelaher:

Q. You further stated: "To be frank, because of volume of business, Arco takes a little more from us." Did you mean that they take a little more from you than they did from other Atlantic dealers?

A. What do you mean, "take a little more"? Dollars?

2841 Q. This is your statement: "To be frank, because the volume of business, Arco"—meaning Atlantic—"takes a little more from us."

A. We were on a percentage basis at the time.

Q. Did you mean they took more from you than they did from other Atlantic dealers in any respect?

A. Our rent was based on a six percent basis and for that reason they would take more. My rent would be more than a dealer that wasn't doing the tire volume that I was doing.

Q. Then, you further stated: "Now conducts Lee tire business—stores them in garage." So, your Lee tire business, your Lee tire stock has been in your garage for sometime, has it not?

A. Could I explain that, please?

Q. You go right ahead.

A. Back when we were on the percentage basis, which was six percent of our gross other than gasoline, I was wholesaling a lot of tires to dealers that had previously handled Lee before the Goodyear program came about. Atlantic dealers, by the way.

With the setup that I had at six percent and with a narrow margin in wholesale, it wouldn't be very profitable to sell them through my Atlantic service station because my wholesale markup, by the time I paid six percent on my rent out of my wholesale profit, it would have been
2842 pretty near a losing proposition. So, for that reason at that time I did not put my wholesale business

through my service station business. I rented the garage at 640 Chenango Street to store tires in, but the main reason they were in there was because of the volume that we carried, the inventory at the time.

Q. But, isn't it a fact that you wanted to continue to carry Lee tires in your Atlantic service station at the time Atlantic changed over to Goodyear tires, Goodyear TBA?

A. That is absolutely true.

Q. That is true?

A. Yes, sir.

Q. And you resisted the change?

A. I did at the time, absolutely.

Q. And you finally gave in because you were forced to give in, isn't that true?

A. No, sir, it is not true. I was forced to give in, no, sir. Because, sir, I have never given in yet.

Q. Well, it seems to me you have.

A. Why don't you check my Lee invoices for the last ten years?

Q. Let me ask you—let me read this next statement: "Would not be here too long if went 100 percent Lee."

A. Well, that, in a sense, is true.

Q. That is true. Now, we are getting somewhere.

A. But not in the malicious way that you put it.

2843 Q. Believe me, I am just attempting to establish the facts.

A. The fact that I have been there 15 years kind of proves that there certainly hasn't been too big of an objection to my handling Lee tires and Exide batteries.

Q. But the fact is you were afraid of some retribution—

A. (Interposing.) I wanted to see what was going on before I stepped off, yes, sir.

Q. There was a possibility that your lease might be cancelled?

A. No, sir; the lease was never mentioned.

Q. Did you ever give thought to the fact that you were on a lease which could have been terminated on short term?

A. I used to be, yes, sir.

Q. And at that time you stated here that you were on a year to year 30 day clause?

A. That is right, sir.

Q. When it boils down to reasons stated there, it is 30 days. In other words—

A. (Interposing.) Either way.

Q. You felt that you were there from month to month, so to speak?

A. And by the same token I could leave month to month, yes, sir.

Q. Now, you also said that you also sold any brand of TBA on Atlantic credit cards. Do you recall that on 2844 your direct testimony?

A. Yes, and I remembered that, too.

Q. And you also stated on direct testimony that you have seldom given any thought to the matter?

A. That is right.

Q. Now, you state here, and I quote: "Believes credit card sales limited to Goodyear tires, batteries and accessories: when other sales made (Lee) delivery ticket identifies tire as Goodyear."

A. Yes.

Q. So, it was your practice when you were selling Lee tires through your service station to report it to Atlantic as Goodyear, isn't that true?

A. When this change-about came about—

Q. (Interposing.) Just answer that question Yes or No.

A. What is it, sir?

Mr. Thompson: You don't have to answer it Yes or No. Answer the question and then explain as much as you like and take your time in answering it.

By Mr. Kelaher:

Q. I ask you if it isn't true that when you sold Lee tires on Atlantic credit cards you reported it to Atlantic as a Goodyear tire?

A. At that time, yes, sir. Now, may I explain it?

Q. What was your reason for doing that?

2845 A. Well, as I told you previously—on another question you asked me—when we went into this change-over deal we didn't know from nothing. We didn't know just what we were getting into.

Q. What do you mean? Explain that in a little detail.

A. Well, I will tell you, we had had a very nice relation with Atlantic through the TBA program that they had and at the time of this change-over I think everyone felt the same way, they didn't go for it to start with. But as the thing shaped up and we realized the advantages of it, it changed our mind all the way along, and as far as the credit ticket was concerned, why, I believe my tickets could be checked back for a long, long period to this statement deal here, and that Goodyear thing at the time we may have used it, because we didn't know whether we could or whether we couldn't. It had never been brought out. So, rather than get into any deal at all over it, why, we probably did use Goodyear.

Q. And that was to—

A. (Interposing.) Not to hide the fact we sold Lee tires because my Lee tires were right there in sight and they have been. Mr. Lipsky knows they were in sight.

Q. Now, are you finished?

A. Yes, sir.

Q. Isn't it true that you wanted Atlantic to think that you were selling only Goodyear tires on Atlantic credit cards?

2846 A. No, sir.

Q. Wasn't that the reason you reported it as Goodyear?

A. Absolutely not.

Q. What reason would you have?

A. Because if there had been a policy that a Lee tire could not be charged on an Atlantic credit card, we would lose sales through not being able to put them on Atlantic credit cards.

Q. That is exactly what I said or asked you in another way.

Now, credit card sales are an important part of service station operation, are they not?

A. Today, yes. At that time, no.

Q. Well, at that time you made this statement to Mr. Lipsky with respect to the fact that Atlantic credit cards were limited to Goodyear TBA:—

A. I thought—yes, sir.

Q. (Continuing.) —“What other reason is there for all Arco service stations handling Goodyear TBA?”

Now, my question is this: that credit card sales have been an important part of service station operation for sometime, including 1953, isn't that true?

A. The volume in '53 was nowhere near the volume that it is today, credit card sales by, I would dare say, four or five hundred percent.

Q. What did you mean by this statement: “What other reason is there for all Arco service stations handling Goodyear TBA?”

Mr. Thompson: Why don't you show him the statement and let him see it in context instead of picking a stray statement out of the middle of a page?

(The document was handed to the witness.)

The Witness: Well, you know, Mr. Kelaher, a lot of the wording that is here, with due respect to Mr. Lipsky, I probably said, but I don't know if I said it in this exact

manner, and this was a long time ago. It is not too clear to me.

I don't connect the two paragraphs, sir, really, I don't. (The document was returned to counsel.)

By Mr. Kelaher:

Q. However, it does appear from your statement that all Atlantic stations in the Binghamton area swung over to Goodyear TBA; is that correct? That is, at the time of the changeover.

A. Yes, I would say that was correct, yes, sir. We had to have a source of supply at the time:

Q. In connection with your statement about a source of supply, isn't it true that you had a source of supply for Lee tires at the Lee factory branch in Syracuse, New York?

A. I did, yes, sir.

Q. And you were buying from that branch, were you not?

2848 A. Yes, sir. That is on tires only.

Q. Beg your pardon?

A. That is on tires only. I have never had any Lee batteries.

Q. I am referring to tires only, so that you did have a source of supply?

A. On tires, yes.

Q. And weren't there also other competitors of Goodyear in the Binghamton area selling tires at that time, or haven't there been tire salesmen in the Binghamton area for many, many years?

A. Absolutely, yes.

Q. And you have suppliers of all brands of tires?

A. I buy all brands of tires; that is right.

Q. Now, isn't it true that Lee tires have good consumer acceptance in the Binghamton area?

A. Yes.

Q. And isn't it true that the road hazard guarantee of Lee was a strong selling point on Lee tires?

A. That is true, sir.

Q. And isn't it true that Goodyear had no such road hazard guarantee?

A. That is right.

Q. Is that correct?

A. Absolutely.

Q. And isn't it true that you were able to get 2849 lower prices on Lee tires than Goodyear tires?

A. That is right.

Mr. Kelaher: Your Honor, I wonder if I may have about two minutes, and then I think I can finish up shortly.

Hearing Examiner Kolb: All right.

By Mr. Kelaher:

Q. Mr. Buongiorno, on direct examination you were shown Respondent's Exhibit A-12 and Respondent's Exhibit A-13. Referring first to Respondent's Exhibit A-12, what purpose is this used for—is this used in connection with your wholesale business?

A. Both, sir.

Q. Both wholesale and retail?

A. Yes, sir.

Q. Do you also have a separate Atlantic form for your retail business?

A. Are you referring to credit cards?

Q. Yes, sir.

A. Yes, sir.

Q. Is this for credit card?

A. No, sir.

Q. This is for any type of sale?

A. That is right.

Q. Do you also have a special Atlantic form for credit cards?

A. That is right.

2850 Q. And that does not carry Lee tires or Exide battery testing?

A. It is strictly a form, sir. It has nothing on it. We run it through a printing machine.

Q. This statement, RX-A-13, is that used in connection with your wholesale business?

A. Wholesale and retail, both.

Q. And retail, both?

A. Yes, sir.

Q. Now, in connection with the storing or stocking of Lee tires in your service station, you stated that no comments were made by Atlantic with respect to such tires. Do you recall that testimony?

A. Yes, sir.

Q. I would like to read your remarks concerning that matter: "Lee tires are stored in garage. When stored in service station, Arco salesman—general manager would ask, 'When are those tires going down?'"

Do you recall that?

A. Yes.

Q. Now, does that refresh your recollection?

A. Yes.

Q. And so, as a matter of fact, you were asked by Atlantic salesmen, the personnel, to get those Lee tires out of your service station, were you not?

2851 A. I don't think it says that there, sir.

Q. How do you interpret that?

A. That particular instance comes to my mind very well. Naturally, the Atlantic salesman was trying to sell me Goodyear a hundred percent, and in the course of conversation, from what it says here—and I assume that I must have said it at the time—he asked me, "When are those tires going down?"

Q. What did he mean by that?

A. Well, when can he—the Lee tires were in my service station—when will I take those down and start selling Goodyear. But not in a sense of, get those tires out of here, here comes some Goodyear. Because the tires are still there, I am still not selling Goodyear a hundred percent.

Q. With respect to batteries, I think you did state that you stock more Goodyear than Exide, is that true?

A. Yes, sir.

Q. On your accessories you indicated that you purchase from a number of suppliers?

A. Yes, sir.

Q. Do you purchase from the Goodyear service store, any accessories from the Goodyear service store?

A. Yes, sir.

Q. What products do you purchase from it?

A. From Goodyear?

Q. From Goodyear.

2852 A. Some AC products, some Du Pont products—

Q. (Interposing.) Do you stock Goodyear fan belts?

A. Yes, sir. Goodyear fan belts.

Q. And, as a matter of fact, you stock a number of accessory products which are purchased from the Goodyear service store, isn't that correct?

A. Yes, that is right.

Q. So, when you state that you buy from everybody that comes around, you are not indicating that you stock from everyone who comes around?

A. I was kind of waiting for that one, sir. We carry a representative name brand line which is also carried by Goodyear. I am called on by salesmen at least one a day, most days, two or three, from our local wholesalers other than Goodyear. Goodyear calls on me one day a week, which is Wednesday. Okay. All the wholesalers

in our area that carry the brands that I carry have as much access to sending me merchandise ~~at~~^{as} the Goodyear man, and I believe that the Goodyear share would be comparatively small compared to the other wholesalers that supply me. I think my records would bear that out.

Q. However, fan belts, for example, you do stock Goodyear fan belts?

A. A hundred percent, yes, sir.

Q. And fan belts is a good seller in the service station business?

2853 A. It isn't a big seller, but it is a necessity.

Q. Right. And we have established that you also stock other accessories purchased from Goodyear service store. Would they be polishes and chemicals of various types?

A. I carry the Du Pont line which is also carried by Goodyear. I don't carry any of the Goodyear polishes and chemicals that are put up under the Goodyear name.

Q. But in the Goodyear line, of course, you have many national brands and you carry those?

A. Right; that is right, sir.

Q. Right. Now, you stated a moment ago, just to clarify this, that you do not maintain two separate businesses?

A. That is right, sir.

Q. And, of course, there, as I recall your answer, you stated you do not maintain two separate businesses for income tax purposes; is that correct?

A. That is true, sir.

Q. With respect to your rental paid Atlantic for your service station, isn't it true that that is based on the operation of your service station and is separate and distinct from your warehouse operation?

A. No, sir; not now.

Q. Now it isn't. Was it at one time?

A. Our leases are not the same as they were back at this period.

2854 Q. What type of lease are you on now?

A. It is an altogether different lease.

Q. Well, under the current lease, are you under the type of lease—

A. (Interposing.) I have a long term lease, sir.

Q. Let me ask you this to clarify this. At one time you paid a flat rental plus six percent of gross receipts exclusive of gasoline, right?

A. That is right.

Q. Now, that has been changed, apparently?

A. That is right.

Q. Now, under the new type of lease that Atlantic has, you pay in some areas at least, and apparently in your area, do you pay a percentage of gross sales of all products?

A. That is right, sir.

Q. Now, at this time are you telling us that if you sell Lee tires as a warehouse distributor for Lee, you pay a percentage of that to Atlantic as rental?

A. That is right, yes, sir. Could I say something else there.

Q. You go right ahead. I would like to have that clarified.

A. At the time you were referring to before, I would be paying six percent of the gross wholesale as rent, is that right, on my old lease?

Q. Yes.

2855 A. On the new lease that would be maybe two percent or two and a half percent. So there isn't quite the difference that there was.

Q. But the rental is paid on your wholesale operations?

A. That is right, sir.

Q. I just have one more series of questions, and then we will conclude cross-examination.

I would like to ask you if you recall attending a meeting of Atlantic dealers in 1951 concerning Lee tires, and this was after the Goodyear TBA plan was sponsored by Atlantic. Do you recall such a meeting?

A. No, sir.

Q. Do you recall a meeting with other Atlantic dealers who were dissatisfied with the Atlantic change to Goodyear tires from Lee tires? Do you recall such a meeting?

I can refresh your recollection by mentioning the names of the dealers who were present, if you wish me to.

A. If you would, sir.

Q. Mr. Herman Gay, Mr. Maseyko, Mr. Dunham, and Mr. Harder. Do you recall such a meeting?

A. I must certainly, but I can't, no. But I must have been there.

Q. And would it refresh your recollection if I told you that you expressed dissatisfaction with the fact that Atlantic was now sponsoring Goodyear TBA instead of Lee tires?

2856 A. That is absolutely true, as I told you before.

Q. So, there was such a meeting, and the matter was discussed?

A. Apparently, yes, sir.

Q. Wasn't it decided at that meeting that you and these other Atlantic dealers would attempt to go back to selling Lee tires in your Atlantic service stations?

A. I can't tell you, sir. You say "go back". I had never discontinued it.

Q. You recall nothing further about that meeting; is that correct?

A. No, I honestly don't. Other than—you keep going on Lee tires. It was the entire program at the time that we

didn't go for it to begin with. We had a very excellent deal with Atlantic as far as TBA was concerned.

Q. And you were satisfied?

A. And we, let's say, didn't want to try something new. it has since proven to be an excellent deal for all concerned.

Q. But at the time there was general dissatisfaction among Atlantic dealers?

A. Right.

Q. Nevertheless, the program did go into effect at that time?

A. No, it didn't go into effect at that time. I think it was a gradual change-over, and it wasn't a cut-it-off here and start Goodyear tomorrow deal.

2857 Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Any questions?

Mr. Thompson: Yes, sir.

Do you wish to continue the torture? I am getting hungry.

Hearing Examiner Kolb: Do you want to adjourn?

Mr. Thompson: Mr. Kelaher might suspect me of leading the witness with answers to questions.

Mr. Kelaher: You would be the last person I would suspect, Mr. Thompson.

Mr. Thompson: From time to time, Mr. Kelaher, may I have the privilege of using Mr. Lipsky as an interpreter of his handwriting? There are words here which I can't read.

Mr. Kelaher: I don't see any particular need for that. If the need arises, we will meet it.

Mr. Thompson: I will consult you if that need arises.

Redirect-Examination by Mr. Thompson.

Q. Now, Mr. Buongiorno, except for the signature on one page of this four-page document is anything there contained in your handwriting (showing document to the witness)?

A. No, sir.

Q. Was this entire document written by Mr. Lipsky?

2858 A. Yes, sir.

Q. Were the words that he used your words or his?

A. That I couldn't tell you, sir. That was a long time ago. I would imagine that it was a condensation of what he interpreted me saying.

Q. Did he try to put words into your mouth during this conversation?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Overruled.

The Witness: I don't remember Mr. Lipsky, honestly I don't. I remember him being there, but not as a person or what he said. Could I take a moment and explain maybe how some of that came about?

By Mr. Thompson:

Q. Surely; go right ahead.

A. Maybe it has no bearing, but it does to me.

At the time of this statement we had amongst our dealers in the area—I may be cutting my throat—an unhealthy situation, not in relation to the Lee tires or Goodyear tires, but another deal, and at that time I think most of our dealers were a little antagonistic over another matter now, which has no bearing on this deal, and I think, as I said before, it has since been clarified and rectified, and it no longer exists, and I believe that if Mr. Lipsky, on the day he came, I was concentrating on that other matter

2859 which I probably was, I wasn't too happy at the time.

Q. Did Mr. Lipsky suggest to you that there was a 30-day cancellation clause in your lease?

A. I couldn't tell you, sir. I knew there was a 30-day cancellation clause in my lease, which could work both ways. I could cancel, too.

Q. By that you refer to a provision in your lease which permits either the Atlantic Refining Company or you as the dealer to cancel 30 days before the expiration of the term, is that what you are talking about when you say 30-day cancellation clause?

A. Yes, sir; that is right. I have to give them 30 days notice previous to a new lease, and they would give me 30 days notice previous to a new lease. But it worked both ways, it was as fair for one as for the other.

Q. Mr. Kelaher pointed out to you that there is a printed phrase in this document of Mr. Lipsky's called "Terms of Lease" that it then says "year to year."

A. Yes.

Q. Since about 1953 have you not had a three-year lease?

A. That is right, sir.

Q. Then, he pointed out notation in Mr. Lipsky's handwriting which seems to read: "With 30-day clause."

A. You are referring to the old year-to-year lease.

Q. In the old year-to-year lease?

2860 A. That is right.

Q. Now, the 30-day clause to which you referred was the 30-day provision entitling Atlantic or you at the termination of the lease to cancel it on 30-days' notice; is that correct?

A. Thirty days previous to the expiration of my lease I could notify them that I wasn't going to renew it or they could me. That is the way I understood it.

Q. There has never been in any lease you have ever had from Atlantic Refining a provision entitling Atlantic to cancel on 30 days' notice?

A. I honestly, under oath, I have never read my lease. For 15 years I didn't have to question it, and I don't see why I should read it now.

Q. That was Mr. Lipsky that suggested it to you that there was a 30-day cancellation clause in your lease?

Mr. Kelaher: Objection, your Honor.

The Witness: I don't understand what they mean, sir. I know about the 30 days at the expiration. In other words, if I were contemplating getting out of business, I would have to look at my lease, see when this expiration occurs, I would have to notify Atlantic 30 days previous to the expiration that I was not a renewer. I believe it worked the same way on the other one, because I believe my lease is the same except it is longer.

2861 Mr. Thompson: May I call upon an interpreter.

Mr. Kelaher: Maybe I can interpret it.

Mr. Thompson: Maybe you can do a better job. What does this say.

Mr. Kelaher: "When it boils down to reasons stated there, it is 30-day."

Over here, then starting a new sentence, "Renew each year."

By Mr. Thompson:

Q. Did Mr. Lipsky suggest to you that when it boils down you had a 30-day lease? Did he give you that impression?

A. No, because I think I would have contradicted him. I couldn't do business on a 30-day basis to begin with.

Q. Have you ever had any apprehension at all about Atlantic cancelling any one of your leases?

A. The proof is that I still have one.

Q. Have you ever had any apprehension about it?

A. No, never been mentioned as far as the lease is concerned.

Q. At all times since 1951 have you had Lee tires openly on display for sale at retail at your service station?

A. Yes, sir.

Q. At all times since 1951 have you had openly displayed at the station Lee tire advertising signs?

A. Yes, sir.

Q. When Mr. Lipsky came to your station, did 2862 you show him Lee tires actually in the station displayed for sale at retail?

A. That, Mr. Lipsky could answer better than I. I don't remember. But if he looked around, I think he saw them.

Q. At the time Mr. Lipsky came to your station was Exide your primary battery line?

A. At that time I believe I was pretty near a hundred percent Exide, yes, sir.

Q. Did you have Exide batteries in your station displayed for sale?

A. I not only had Exide batteries, I had a rack that had been moved from my old building over into the new building. It is still there, by the way.

Mr. Thompson: Mr. Interpreter, there is an illegible something or other here that is blotted. It looks as if somebody had spat upon it. What is this word?

Mr. Kelaher: "Lee tires are stored in garage. When stored in service station, Arco, salesman, general manager, would ask, 'When are those tires going down?'"

By Mr. Thompson:

Q. Did you understand what the interpreter read?

A. Yes, sir.

Q. Now, in addition to having Lee tires on display at your station, do I correctly understand that so far as your wholesale business was concerned you were stocking 2863 and storing Lee in an adjacent garage?

A. That is right.

Q. There is an interlineation here that says, apparently, "When stored in service station Arco, salesman, general manager would ask, 'When are those tires going down?' "

In the first place, do you know what the interlineation of general manager means after the word "salesman"?

A. No, I don't.

Mr. Kelaheer: Could you speak up so we can all hear you?

The Witness: No, sir; I don't know what that is written in there for, but I do know this: it may or may not be the way the thing happened, but maybe Mr. Lipsky, in our conversation, which that must be, but just in part as near as I can figure. Certainly, he was there much longer. This was just what he picked out.

By Mr. Thompson:

Q. What you are saying is he only wrote down part of the things?

A. I would say that, yes. He may have asked me, was any pressure brought upon me, did the sales man ever say anything about the tires up? I could have said—apparently I did because he has it wrote down there—when are you going to take those tires down. I don't remember the conversation at all. I do know the tires are still there, 2864 and to the best of my knowledge have not been taken down.

Q. You own and run the station. Now, am I correct in my understanding that you have at all times stocked Lee since '51 right at the service station?

A. That is right, sir.

Q. So that if the Atlantic salesman tried to persuade you to shift to Goodyear tires, he was not successful, was he?

A. No, sir, he didn't sell me in the sense of getting rid of Lee to stock Goodyear, no. I stocked them both. I found it was to my advantage to stock them both the same as I have told you about Goodrich and Royal.

Mr. Kelaher: About what was that last?

The Witness: Other tires that I have stocked and sold. The same as other accessories.

By Mr. Thompson:

Q. Under other TBA Mr. Lipsky wrote into this statement: "Usual accessories—Fram oil filters". Is that what that says?

A. I have always sold Fram, nothing else.

Q. Is Fram in the Goodyear line?

A. No, sir; that is a holdover from Atlantic, they sold me on it years ago, and I have never changed.

Q. And you still have been stocking Fram over all these years?

A. One hundred percent. There is no other filters 2865 in my place, never have been, they are there today.

Q. Then, Mr. Lipsky wrote in this statement: "The thing that hurts is this—the dealer states that he is being told how to run the business, hours open"—

A. (Interposing.) Yes.

Q. (Continuing.) —"and TBA handled."

A. That is right.

Q. What did you mean by that statement?

A. That was the situation that I referred to a moment ago. We had a dealer in town that either was left his place of business and took another one due to the fact that he had been—tried to persuade him to keep different hours than what he was doing, and rather than do it, he moved and that is why when I came across that it kind of came into my mind while we were under this duress at the time. I don't think that situation exists anymore.

Q. Then, you were referring in this—

A. (Interposing.) Which burned me up at the time, let's face it.

(Laughter.)

Q. And you are no longer burned up, Mr. Buongiorno?

A. No, I mean at that time I was, yes. But—

Q. (Interposing.) What I was really trying to get at is this:—

Mr. Kelaher: Did you finish?

2866 Mr. Thompson: Go ahead.

By Mr. Thompson:

Q. When Mr. Lipsky wrote down the dealer states that he is being told how to run his business, was he referring to you or the other dealers to which you have referred?

A. I was referring to the other dealer at that time.

Q. And this statement was not a personal statement that it is hurting you because you were being told how to run your business? You were referring to some other dealer?

A. I wasn't at the time; from this other dealer, I thought I might, in fact, at the time I thought Mr. Lipsky was here on this other deal.

Mr. Kelaher: Will you speak up?

The Witness: I said I think that at the time Mr. Lipsky was questioning me more on a lease basis than he was the product that I sold.

By Mr. Thompson:

Q. In other words, the tenor of the conversation related to the provisions of your lease, hours of operation, things of that type, rather than TBA?

A. I think so. In fact, I believe he read or asked to read my lease.

Q. Then, under "Reason for choosing line of TBA carried" Mr. Lipsky wrote down "No pressure as such."

A. That is right.

2867 Q. What did you mean by that?

A. That there was no pressure at all on what accessory line I carried. I think it is obvious from that.

Q. Then, Mr. Lipsky next wrote down "Dealer stated that the Goodyear set-up at first made him mad. Thinks he should get five percent Arco is getting."

A. That is right.

Q. So the thing that made you mad was that you felt that whatever commission Atlantic was getting should be given to you, or was that the point?

A. In a sense, yes. Actually, when we had our own TBA program through Atlantic, the price structure was much different than the Goodyear price structure, and when we first went into the Goodyear program, we naturally, lost an extra percentage that we were getting with Atlantic, and, well, we just didn't like it, of course. Since, the thing has come around into shape and it is all right, but it was a new deal to all of us and when it was presented there were a lot of things that we didn't like about it, and that is the reason that a lot of us didn't accept it, and we continued on with the lines that we were selling or we went out on the open market and dickered and see where we could get a deal on different items.

Q. You are still doing that, aren't you?

A. We are still doing it. Heck, yes, we have to.

Q. When Mr. Lipsky wrote down "Salesmen don't 2868 sell", were you referring to Atlantic salesmen or to Goodyear salesmen? Would you mind looking at it in context and let me know (document handed to the witness)?

A. I don't connect the two.

Q. The answer is you don't connect the two?

A. Yes.

Q. You can't tell from this statement when Mr. Lipsky wrote down "Salesmen don't sell" he was referring to the Goodyear salesman or to Atlantic salesman?

A. No, I don't.

Q. Let me ask you this, then: over the course of the past seven years since Atlantic has been promoting Good-

year, have Atlantic salesmen endeavored to sell you on the Goodyear line?

A. Oh, yes. Yes, sir.

Q. Is that a continuous performance? I mean, do they always try to?

A. I think they have given up on me.

Q. You think they have given up on you?

A. Other than periodic deals they will sell me, like a spring dating, the tires stock for the summer, and the fall dating for my merchandise and so on, which, by the way, I would buy from Goodyear whether Atlantic was in the deal or not, because they have the most acceptable snow tires on the road today, and they have had for some time. I don't sell Lee snow tires.

2869 Q. There is a reference here which I find hard to read. Perhaps you can. It refers to S.S. dealers who were without source of supply. There is a reference here to your sales of Lee. The statement reads: "Dealer"—I suppose that means you—"kept stalling change and went into Lee heavy and distributed Lee to S.S. dealers who were without source of supply."

A. That is right. That is how I happened to get into the wholesale business of Lee to begin with.

Q. In other words, when Atlantic stopped selling Lee—

A. (Interposing.) It was a beautiful market, sir.

Q. (Continuing.) —you wired Lee and got a distributorship?

A. That is right.

Q. And picked up whatever business you could from the service station operators selling them Lee; is that correct?

A. That is right.

Q. When you say a Goodyear truck came by and took down Lee signs and replaced with Goodyear, has it been made clear on the record that the reference was not to signs, but to the decals in the windows?

A. I hope so, sir, because that is exactly what it was.

Mr. Thompson: Will you mark this Respondent's Exhibit A-14 for identification.

(Whereupon, the document referred to was marked Respondent's Exhibit (Atlantic) 14 for identification.)

2870 By Mr. Thompson:

Q. I show you a picture of a service station. This has been identified as R-A-14. Is that your service station in Binghamton?

A. Yes, sir.

Q. Is that an accurate picture of it?

A. Yes, sir.

Q. Do you recall when this picture was taken, Mr. Buongiorno?

A. I don't know, sir.

Q. About two years ago, something of the kind?

A. It is long enough ago so that I have forgotten when the actual time. It wasn't taken recently. There might be some way I could tell by looking at it.

Q. Are the Lee signs which appear in the picture the signs to which you have been referring?

A. Yes, sir, you can see them, both of them.

Mr. Kelaher: I am going to object to the use of the photograph unless it is identified more clearly as to the date when the photograph was taken.

The Witness: I think I can—

By Mr. Thompson:

Q. (Interposing.) Mr. Buongiorno, Mr. Kelaher has objected to the use of this picture unless we can identify more clearly what it represents.

Mr. Kelaher: When it was taken.

2871 By Mr. Thompson:

Q. Does this picture accurately portray photographically your service station as it now appears in 1958?

A. I would say it would be exact with the exception of this Coca-Cola cooler which I have since painted to blend in with the building.

Q. Otherwise it is the same?

A. Yes, sir.

Q. Are the Lee signs which appear in this picture the same signs which have been there for many years?

A. Yes, sir.

Mr. Thompson: I offer in evidence R-A-14.

Mr. Kelaher: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Respondent's Exhibit A-14.

(Whereupon, the document, heretofore marked RESPONDENT'S EXHIBIT (Atlantic) 14 for identification, was received in evidence.)

Mr. Thompson: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Thompson:

Q. Were those Lee signs on your station when Mr. Lipsky came there?

2872 A. I believe they were, weren't they?

Mr. Kelaher: He is asking.

The Witness: Yes, I would say so, yes, sir. They have been there.

By Mr. Thompson:

Q. Do you know why Lipsky wrote into your statement: "How long do you think we would be in business if we had signs up for Lee out front or stored Lee tires in the service station?"

A. No.

Q. At the time he was there the Lee signs were up and

you were storing Lee tires in the service station, weren't you?

A. That is right. Yes, sir.

Mr. Kelaher: Does that picture show that Lee tires were stored in the service station?

The Witness: I don't—unless there would be one in the window.

Mr. Thompson: Is this redirect examination? I think I am competent to ask my questions.

Mr. Kelaher: I am just—

Hearing Examiner Kolb (interposing): Let's go ahead here. Let's go ahead.

By Mr. Thompson:

Q. There is a statement here Mr. Lipsky made which says: "Big volume done in Goodyear—could buy Lee tires cheaper."

2873 Do you understand that reference? What that means.

A. I have never done a big volume in Goodyear. That is in comparison to my Lee volume. But I don't quite get what that does mean.

Q. What is the comparative pricing situation on Goodyear and Lee, Mr. Buongiorno?

A. Are you talking about retail prices?

Q. Yes, sir.

A. It is identical. The retail prices.

Q. The retail price to the consumer is identical?

A. That is right, yes, sir.

Q. As a Lee wholesaler, am I correct in my assumption that you can buy Lee tires at a better discount than you can buy Goodyear tires?

A. Absolutely.

Q. That, of course, is why you are in the business of distributing Lee tires?

A. It is about as good a reason as I have, sir, yes.

Q. In 1953 did you think that you might not be there long if you went a hundred percent to Lee?

A. That is a tough question to answer.

Q. Do you think today if you went a hundred-percent Lee, Atlantic would bother your lease?

A. I don't think they would, no. I am practically as far as the tire business is concerned, I am about 80 percent Lee anyway. It wouldn't be to my advantage to go a hundred percent Lee.

Q. But if you kept your volume and your gasoline gallonage up as such, do you think for a minute that Atlantic would bother you if you handled Lee exclusively?

A. It has always been my opinion as long as my gallonage was up and I kept a neat, orderly station and run a business as it should be that I had no lease worries. I have never bothered them as far as that goes.

Q. Isn't the pragmatic test of that the fact that you have been handling 80 percent Lee tires and Exide batteries for many years and nobody has ever mentioned it on a lease renewal?

A. That is about what I have said from the start.

Q. If I understand your responses to cross-examination by Mr. Kelaher, you thought in 1953 that there might be some doubt about whether you were permitted to charge Lee and Exide products on Atlantic credit cards.

A. I explained that, sir. All the time we were selling Lee tires and batteries and accessories, whatever Atlantic sold, we wrote two Lee tires, there was no reason not to. When we went over to the Goodyear program, I suppose we wrote two Goodyear tires even if they were Lee. Maybe there was a discrepancy there, maybe there wasn't, but why ask for it. I don't know. You are looking out for yourself. I do it everyday.

2875 Q. And you don't specify—

A. (Interposing.) We specify nothing on them, nothing at all. Usually tires, amount, tax, sales tax.

Q. And you have followed that practice for some years, haven't you?

A. That is right. I think my tickets will bear it out.

Q. I think you already testified that that practice on your part has never been criticized by Atlantic, has it?

A. No, sir.

Q. You did mention the fact, Mr. Buongiorne, that you handle a lot of the nationally advertised accessories, which are in the Goodyear line.

A. Yes, sir.

Q. Does that mean that you buy them from Goodyear necessarily, or from anybody who handles that particular brand?

A. I buy them wherever it is convenient. My invoices over the past, if they could be looked at, which would be much simpler than questioning me, would show where they were bought from. My sales would show where they went, and the invoices would show where they came from, whether Goodyear, United Auto Parts, Whipple's or whoever I bought from.

Q. Do some of those jobbers whom you have just mentioned handle, for example, the DuPont Chemical line?

A. I believe everyone but one I mentioned, and they happen to handle the Hollingshead line, which I don't handle.

2876 Q. And when you have DuPont chemicals on your shelf for display, does that mean that you bought them from Goodyear?

A. If you know our business, you would realize that that is a foolish question.

Q. Foolish as it may be, that is the inference that Mr. Kelaher tried to create and I am just trying to get the facts fairly on the record.

A. Let me give another example, please, sir.

Q. Would you mind answering the question? You could have bought that Du Pont Chemical from any one of a half dozen—

A. (Interposing.) United Auto Parts was giving a blanket about two months ago; so, I bought Du Pont from them. Maybe next month they will be giving a pop corn popper, I will buy it from them. I have no specific place that I buy my chemicals, Du Pont line.

Q. And does that same answer apply with respect to other nationally advertised brands of accessories which are in the Goodyear line and are also sold by other jobbers?

A. That is right, sir.

Mr. Thompson: Thank you, very much, sir.

Hearing Examiner Kolb: Do you have any questions, Mr. Kelaher?

Mr. Kelaher: I have just a couple.

2877 *Recross Examination by Mr. Kelaher.*

Q. Just a few minutes ago on redirect Mr. Thompson referred to the fact that you were selling 80 percent Exide batteries.

A. How many percent?

Q. Eight percent Exide batteries. I think you testified earlier that you sell more Goodyear than Exide.

A. That is right.

Q. Then, the 80 percent was not correct?

A. At the time that Mr. Thompson was asking me, that figure was correct. Now, it isn't. Now, I buy Goodyear in volume. Price-wise I come out much better than I did on Exide. However, I still stock Exide because I do a little wholesale business.

Mr. Kelaher: Your Honor, I have no further questions, but I would like the record to note that this witness' name

is mentioned in CX-172-A, -B, and also in the transcript at page 341 in connection with his service station identification.

CX-172-A, -B, shows that as of October 24, 1951 this witness refused to permit Goodyear signs to be placed in his station. The address was given as Chenango and Bromley, Binghamton, New York. A stipulation entered into with counsel for Atlantic shows that this witness did subsequently display Goodyear identification, transcript 341.

2878 Mr. Thompson: I think, sir, that the record further shows that Mr. Buongiorne refused to permit the Goodyear signs to be placed on his station because it was under construction and further testified that when the station had been modernized, it did permit the signs to be put up.

The Witness. That is absolutely correct.

Mr. Kelaher: That is in the testimony, not in the document. It just says, refused.

Hearing Examiner Kolb: We will adjourn until 3:00 p.m.

(Whereupon, at 1:50 o'clock p.m., the hearing in the above entitled matter was recessed to reconvene at 3:00 o'clock p.m., the same day.)

2879 Hearing Examiner Kolb: On the record.

Mr. Thompson: Mr. Maseyko, would you take the stand, please?